883

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,475

MARY KATHRYN SMITH,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Texas.

(ORIGINAL RECORD RECEIVED APR. 17/57.)
U. S. COURT OF APPEALS
FILED
AUG 20 1957
EDWARD W. WADSWORTH
CLERK

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CAPTION.

BE IT REMEMBERED, that at a session of the United States District Court in and for the Northern District of Texas, held at Dallas, Texas, the Honorable T. Whitfield Davidson, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

No. 15,138 Criminal.

UNITED STATES OF AMERICA,

versus

MARY KATHRYN SMITH.

INDICTMENT.

Filed January 9, 1957.

The Grand Jury charges:

That heretofore, to-wit, on or about September 20, 1956, in Dallas County, Texas, within the Northern District of Texas and within the jurisdiction of this Court, Mary Kathryn Smith, hereinafter called defendant, did barter, sell and dispose of to Cecil Robert Adkins a certain stolen motor vehicle, to wit, a 1956 Buick 4-door sedan, serial number 6C4009697, which said stolen motor vehicle was then and there moving as interstate commerce from Witchita, Kansas, to Dallas, Texas, and which said motor vehicle the said defendant then and there knew to have been stolen.

Count II.

The Grand Jury further charges:

That heretofore, to-wit on or about September 20, 1956, in Dallas County, Texas, within the Northern District of Texas and within the jurisdiction of this Court, Mary Kathryn Smith, hereinafter called defendant, did barter, sell and dispose of to Cecil Robert Adkins a certain stolen motor vehicle, to-wit, a 1956 Dodge Royal Sedan automobile, motor number D63354173, which said stolen motor vehicle was then and there moving as interstate commerce from Wichita, Kansas, to Dallas, Texas, and which said motor vehicle the said defendant then and there knew to have been stolen.

A True Bill:

(illegible),
Foreman.

HEARD L. FLOORE,
United States Attorney.

WILLIAM N. HAMILTON,
Assistant United States Attorney.

MOTION TO DISMISS INDICTMENT.

Filed January 21, 1957.

(Title Omitted.)

Comes now Mary Kathryn Smith, defendant in the above numbered and entitled cause, and moves the Honorable Court to dismiss the indictment in the above

numbered cause, and as grounds for dismissal would show the Court:

I.

Nowhere in said indictment, nor in counts I and II thereof is there alleged any place from which the said automobiles were stolen.

II.

The said indictment affirmatively shows on its face that it was not found and returned in the same Division as the offenses which are alleged to have been commited.

Wherefore, premises, considered, the defendant prays that the above motion be granted.

CHARLES W. TESSMER,
(Charles W. Tessmer),
Attorney for Defendant.

A copy of this motion has this day been served, personally, on the Assistant U. S. Attorney at Dallas, Texas, on this day, January 21, 1957.

Order.

In the United States District Court for the Northern District of Texas.

United States of America,

vs.

Mary Kathryn Smith.

The above motion is (overruled).

Defendant excepts to the ruling of the Court.

(S.) T. WHITFIELD DAVIDSON,
Judge, United States District Court for the Northern District of Texas.

REQUESTED INSTRUCTION NO. 2.

Filed Jan. 21, 1957.

(Title Omitted.)

Gentlemen of the Jury:

The mere possession of stolen property, that is, possession, if any, of the 1956 Buick as alleged in Count I of the indictment, and the 1956 Dodge as alleged in Count II of the indictment, does not establish knowledge that they were in fact stolen property.

Refused.

Defendant excepts.

(S.) T. WHITFIELD DAVIDSON,
Judge.

REQUESTED INSTRUCTION NO. 3.

Filed January 21, 1957.

(Title Omitted.)

Gentlemen of the Jury:

Possession is the actual care, control, custody and management of the property possessed. If you should find from the evidence or have a reasonable doubt that the defendant, Mary Kathryn Smith, did not possess the 1956 Buick 4-door sedan, nor possess the 1956 Dodge Royal Sedan, as that term has heretofore been defined to you, you will acquit the defendant, Mary Kathryn Smith, and find her not guilty.

Refused.

Defendant excepts.

(S.) T. WHITFIELD DAVIDSON,
Judge.

REQUESTED INSTRUCTION NO. 5.

Filed January 21, 1957.

(Title Omitted.)

Gentlemen of the Jury:

he term sale, as alleged in Counts I and II of the indictment is defined to you as follows:

It is a contract between two parties called respectfully, the Seller and the Buyer, by which the former, in con-

sideration of the payment or promise of payment, of a certain price in money, transfers to the latter, the title and possession of the property.

If you should find from the evidence or have a reasonable doubt that the defendant, Mary Kathryn Smith, did not consummate a sale as that term has been defined to you as set out above, and further, if you should have a reasonable doubt that she did not deliver possession and title to the said Cecil Robert Adkins, you will aquit the defendant and find her not guilty. The term dispose as heretofore used in Counts I and II of the indictment is defined to you as follows: It means to alienate, relinquish and part with or get rid of property. That is to say, to exercise the power of control over the property.

Refused.

Defendant excepts.

(S.) T. WHITFIELD DAVIDSON,
Judge.

REQUESTED INSTRUCTION NO. 6.

Filed January 21, 1957.

(Title Omitted.)

Gentlemen of the Jury:

This is a circumstantial evidence case. In such a case circumstantial evidence tends to prove a disputed fact by proving of other facts, and circumstantial evidence must exclude every other doubt and reasonable hypothesis and

if the evidence does not exclude every other doubt and reasonable hypothesis and does not prove to your mind that the defendant is guilty beyond a reasonable doubt, you will say by your verdict "not guilty,". If the circumstantial evidence offered by the Government renders the probability of the defendant's innocence as consistent as the defendant's guilt, you will acquit the defendant and say by your verdict "not guilty".

Refused.

Defendant excepts.

(S.) T. WHITFIELD DAVIDSON,
Judge.

REQUESTED INSTRUCTION NO. 7.

Filed January 21, 1957.

(Title Omitted.)

Gentlemen of the Jury:

You are further charged that the mere inadequacy of price of articles that are sold is insufficient evidence to establish that the seller had guilty knowledge that the articles were in fact stolen.

Refused.

Defendant excepts.

(S.) T. WHITFIELD DAVIDSON,
Judge.

BILL OF PARTICULARS.

Filed January 21, 1957.

The defendant having objected to the indictment on the basis that it does now show where the automobiles were stolen, and the Court having required a Bill of Particulars with reference to this matter, the United States Attorney says that both of the automobiles were stolen at Wichita, Kansas.

HEARD L. FLOORE,
United States Attorney.
WILLIAM N. HAMILTON,
Assistant United States Attorney.

MOTION FOR JUDGMENT OF ACQUITTAL.

Filed Jan. 22, 1957.

(Title Omitted.)

Now comes the defendant in the above numbered and entitled cause and after the Government has rested its case in chief and before the defendant has offered any testimony in her behalf, she respectfully moves the Honorable Court to grant a Judgment of Acquittal in behalf of the defendant because the evidence is wholly insufficient to sustain a verdict of guilty for the following reasons:

(1) The proof is wholly insufficient to establish that the motor vehicles as alleged in the indictment were moving as a part of interstate commerce at the time alleged in the indictment. (Counts I and II).

(2) The evidence is wholly insufficient to establish that the defendant knew that the two automobiles as alleged in Counts I and II of the indictment were stolen and the evidence of her knowledge with reference to whether or not the cars were stolen is as consistent with her innocence as with her guilt.

(3) The only evidence before the Court and jury tending to establish the elements of the offense is to the effect that the defendant may have acted as an aider and abetter and the proof of the actual commission of the offense by others than the one who aided and abetted is totally insufficient.

(4) The evidence is wholly insufficient to establish that defendant sold the motor vehicles as alleged in Counts I and II of the indictment and for that reason there is a fatal variance between the allegations in the indictment and the proof as offered to sustain the indictment.

Wherefore, Premises Considered, the defendant moves this motion be in all things granted.

CHARLES W. TESSMER,
(Charles W. Tessmer),
Attorney for Defendant.

202 Fidelity Bldg.,
1000 Main St., RI-8-3433,
Dallas, Texas.

ORDER.

(Title Omitted.)

The defendant's Motion for Judgment of Acquittal having been presented to the Court and filed after the Government rested its case in chief and renewed at the close of all the testimony in the above numbered and entitled cause, the same is hereby

(Overruled).

Defendant excepts.

(S.) T. WHITFIELD DAVIDSON,
Judge, United States District Court for the Northern District of Texas.

PROCEEDINGS.

In the District Court of the United States for the Northern District of Texas, Dallas Division.

United States of America,

vs. No. 15138, Criminal.

Mary Kathryn Smith.

Appearances:

William N. Hamilton, Assistant United States Attorney, Dallas, Texas, appearing for the Government.

Charles W. Tessmer, Dallas, Texas, appearing for the Defendant.

Be It Remembered that on the 21st day of January, 1957, before the Honorable T. Whitfield Davidson, United

States District Judge, and a jury, the following proceedings were had in the above styled and numbered cause:

Mr. Tessmer:

I am asking Your Honor to call Paul Brinkley as the Court's own witness. We have reason to believe that he has knowledge that is vital, bearing on the guilt or innocence of this woman. He is in the Dallas County Jail. We ask that the Court call that witness as his own witness. He was sentenced to five years by the Court the other day.

The Court:

We will consider that, and I might later ask you to give me your reasons for the request.

Mr. Tessmer:

Yes, Your Honor.

The Court:

Do you have other witnesses?

Mr. Tessmer:

Only the defendant.

The Court:

I will ask the Marshal to bring him up in the morning.

ERNEST STEINER, being first duly sworn, examined in chief by Mr. Hamilton, testified as follows:

Q. State your name and residence to the Court and the jury.

A. Ernest Steiner, 427 North Winton, Wichita, Kansas.

Q. You live in Wichita, Kansas?

A. Yes, sir.

Q. What is your employment?

A. Comptroller, Office Manager for Ben Robinson Buick, Incorporated, Wichita, Kansas.

Q. Is that an automobile lot?

A. Yes, sir, lot and new car sales.

Q. In other words, they are car salesmen?

A. Yes.

Q. Or representatives?

A. Yes.

Q. Now, did I ask you to bring the records with you reflecting the disposition of a Buick four door sedan and a Dodge Royal Sedan from Ben Robinson Buick Company?

A. Yes.

Q. Do you have those records with you?

Mr. Tessmer:

In the interest of time, we will stipulate this witness' testimony. That the automobiles alleged in the indictment belonged to that company, that they didn't give Brinkley or Smith permission to steal them, and that they were later recovered in Dallas through the Dallas Police Department.

Mr. Hamilton:

That is satisfactory to me.

Mr. Tessmer:

It is stipulated between counsel for the government and the defendant that if the witness were called as a witness he would testify he is the Comptroller of the Ben Robinson Buick Company in Wichita, Kansas. In connection with his official duties he has the records, and that on or about the 20th or 19th of September they were the owners, or had possession of the two 1956 automobiles, and the 1956 Dodge as alleged in the indictment and the 1956 Buick as alleged in the indictment. That those cars were taken from their possession without their consent by parties unknown.

And Mr. Steiner would further testify he doesn't know the defendant, Mary Kathryn Smith. That he doesn't know whether she took the cars or not, or who took them off of the lot. Is that correct?

The Witness:

That is correct.

Mr. Tessmer:

Who recovered those automobiles?

The Witness:

The Police Department recovered them.

Mr. Tessmer:

Did your company later recover the cars?

The Witness:

The insurance company did.

Mr. Tessmer:

May it be stipulated that you would testify that the only loss that occurred to your company was the wear and tear

and expense of getting the cars back up there, is that right?

The Witness:
No, sir, that wouldn't be quite right. We actually had no loss of any kind.

Mr. Tessmer:
Did you have insurance coverage?

The Witness:
Yes, sir, we had full insurance coverage and we were paid by the insurance company in due time.

Mr. Tessmer:
You don't identify Mary Kathryn Smith as taking those cars?

The Witness:
No, sir, I don't know her.

Mr. Hamilton:
May it be stipulated they were stolen on or about September, 1956?

Mr. Tessmer:
We have no quarrel with that; if the indictment alleges that we agree to it.

CECIL R. ADKINS, being first duly sworn, examined in chief by Mr. Hamilton, testified as follows:

Q. State your name and address to the Court and the jury?
A. Cecil R. Adkins, Dallas, Texas.

Q. Do you live in Dallas?

A. Yes, sir.

Q. Mr. Adkins, what is your occupation?

A. Government surplus business.

Q. Now, I will ask you if you have ever before seen this lady down here at the end of the table?

A. Yes, sir, I have.

Q. What is her name?

A. Mary Kathryn Smith.

Q. I will ask you if you saw her on or about September 20th of last year?

A. Yes, sir.

Q. Where did you see her?

A. El Sombrero Motor Hotel, Harry Hines Boulevard.

Q. What was the occasion of you seeing her that day?

A. She telephoned me at the place of business, I had met her once before when she was in town, and I went over a little before lunch time, at lunch, and came back, at which time I was approached about a Buick car she was wanting to dispose of due to the fact her husband was getting out of the service, and the price we agreed on was $1,750.00.

She didn't have the title at the time and said if I would give her $1,000.00 down she would bring it back and receive the difference in the amount in a few days, which was agreed upon.

I left to go get the $1,000.00, and upon returning this three tone Dodge sedan is there, which she agreed to go with the other one.

Q. Now, let's see if I understand it. There were two automobiles, a 1956 Buick—

A. Yes, sir.

Q. —and a Dodge automobile?

A. 1956 Dodge, yes, sir.

Q. 1956 Dodge?

A. Yes, sir.

Q. Give us a brief description of those two automobiles.

A. The Buick was a four door hardtop and cream and pink, I guess you would call it.

The Dodge was two tone blue with a cream top.

Q. Now, you paid her $1,000.00, is that correct?

A. That is right.

Q. And that was in cash, did you say?

A. Yes, sir.

Q. You say you went to the bank?

A. Yes, sir.

Q. What bank?

A. Hillcrest State Bank. I might have sent P. T. Clark.

Q. Sir?

A. I might have sent P. T. Clark.

Q. At any rate, you got the $1,000.00 in cash?

A. Yes, sir.

Q. And you went back to the El Sombrero Motel?

A. Yes, sir.

Q. And you paid this defendant $1,000.00 in cash?

A. Yes, sir.

Q. Did you take those cars with you?

A. Took one of them.

Q. Which one did you take?

A. The Buick.

Q. What happened to the other one?

A. I left to take them to the tore, caught a cab, came back and got the Dodge.

Q. What did you do with the Buick?

A. I drove it for several days, had it out at my house when Mr. Pinkston came by and asked me about it and I took it out there and surrendered it.

Q. What did you do with the Dodge?

A. I had it out at the place of business until up in about the first of December, it was loaned out to a man working for me, Harold Roberts, he drove it home because his car was in the shop, and he drove it home and the next morning he came back in his own car and that car was picked up out there.

Q. By whom?

A. By the FBI.

Q. When you took this Buick from the El Sombrero Motel what, if anything, occurred?

A. At the El Sombrero?

Q. With reference to the license plates?

A. They were removed from the Buick.

Q. In your presence?

A. By Mary, the plates on the Dodge were Arkansas, they remained on the car.

Q. Were you given any titles to these automobiles?

A. No, sir; she was supposed to deliver the titles.

Mr. Tessmer:

We object to what she was supposed to do, that would call for his conclusion.

A. She was to bring the title back on the Buick, she was going to get it straightened out, was the reason for removing the license plates.

Q. Now, Mr. Adkins, had you ever met this woman before?

A. One time.

Q. How long before this particular date?

A. Approximately five to ten days, I would say.

Q. On the occasion of September 20th when you went out there, why did you go out there?

A. Just to see her there; she called.

Q. She called you?

A. Yes, sir.

Q. Where did she call you?
A. There at the office.

Mr. Hamilton:
That is all.

Cross Examination.

(By Mr. Tessmer):
Q. This is Cecil Adkins?
A. Yes.
Q. You are in the government surplus business?
A. Yes, sir.
Q. How long have you been in that business?
A. 14 years.
Q. Where is your office located?
A. Maple Avenue, 5800 block.
Q. Do you know a man named Paul Brinkley?
A. No, sir.
Q. You never met him?
A. No, sir.
Q. Never saw him?
A. I saw him down here.
Q. Never talked to him on the telephone?
A. No, sir.
Q. Do you know a man named Vernon Harold Smith?
A. No, sir.
Q. You never saw him either?
A. No, sir.
Q. Now, I believe your testimony is that you got a call at your office, is that right?
A. Yes, sir.
Q. About what time was it when you got that call?
A. Shortly before the lunch hour, from 10:30, or a quarter until 11:00.

Q. What day was it you got this call?

A. September 20th.

Q. Who was present at the office when you got this call, besides yourself?

A. I imagine it was probably Frank Green, P. T. Clark, and possibly a colored boy.

Q. Now, when you got this phone call you got in your automobile—what kind of car were you driving then?

A. I was driving a 1953 or 1954 Pontiac.

Q. How long had you had it?

A. Bought it the year it was made, 1953 or 1954.

Q. Now, all this happened in 1956, didn't it?

A. Yes, sir.

Q. That you are telling us about.

A. Yes, sir.

Q. Did you pay $850.00 for the 1953 Pontiac when you bought it?

A. No, sir.

Q. How much did you pay for it?

A. I p id $900.00 and a 1950 Pontiac.

Q. You were to get two automobiles for $1,750.00, is that right?

A. No, sir.

Q. That was the price agreed on, wasn't it?

A. No, sir, I was to buy one, originally.

Q. But you did buy two, didn't you?

A. Yes, sir.

Q. In other words, you wound up with two automobiles?

A. Yes, sir.

Q. A 1956 new Buick—

A. It wasn't new, no.

Q. Was it worn?

A. I would say it was in fair condition.

Q. Would you say that 1956 Buick four door hardtop was worth $850.00?

A. I imagine it was worth more than that.

Q. Was there anything unusual to you about buying two 1956 automobiles for $1,750.00? Did it seem a little unusual to you, or did you think you were getting a bargain?

A. Well, you wonder a little about it.

Q. You wondered about it?

A. Yes.

Q. You didn't even pay $1,750.00?

A. No, sir.

Q. You got two 1956 automobiles for $1,000.00, that is right, isn't it?

A. Yes, sir.

Q. Where was the defendant at this El Sombrero Motel when you saw her?

A. She was on the north side, I guess you would call it, the northwest side.

Q. Was she registered in the office?

A. I presume so; the luggage was in there.

Q. The luggage was inside?

A. Yes, sir.

Q. Were you registered out there, too?

A. No, sir.

Q. Did you have any friends registered out there at that time?

A. No, sir, I sure didn't.

Q. Who is your bookkeeper? What is his name?

A. C. E. Munns.

Q. He was out there with you, wasn't he?

A. No, sir.

Q. He wasn't out there when you paid this $1,000.00?

A. No, sir.

Q. Where was he?

A. He just works on about two Saturdays a month.

Q. Didn't you have him out there to cash a check?

A. No, sir, I sure didn't.

Q. You are sure of that?

A. I am positive.

Q. How did those two 1956 automobiles get out there? Did this little girl drive both of them?

A. I don't know how she got them there.

Q. They had been there all night?

A. One of them, I know, was there when I got there.

Q. Which one was there when you got there?

A. The Buick.

Q. Who brought the Dodge?

A. I don't know who brought the Dodge there.

Q. She didn't bring it, did she?

A. I don't know whether it was there when I came back from the store.

Q. How did you get out there?

A. Went out there the first time in a Pontiac and the second time in a taxicab.

Q. The first time you went out there talking to this little lady about buying the car, is that right?

A. Yes, sir.

Q. I believe you told the jury she got down and changed the license plates for you?

A. She pulled the license plates off of it.

Q. Did she have a dealers' tags on it?

A. Texas tags.

Q. You didn't have anything to do with taking the license plate off?

A. No, sir, I didn't.

Q. Did you think something was a little funny about that?

A. She said she needed them to get the title straightened out.

Q. You thought this was a bona fide transaction?

A. Up until then.

Q. How long were you out there talking to Mary Kathryn Smith before you started changing the license plates?

A. I didn't change them.

Q. You just stood back and let her pull them off, is that right?

A. That is right.

Q. Did she need those Arkansas plates on that new 1956 Dodge?

A. Did she need them?

Q. Yes.

A. I don't know whether she did or not; she didn't take them.

Q. How were you going to get the title straight on that one?

A. That is where I was left with the bag.

Q. Did you leave her with the bag?

A. I never did get the title to the Buick car.

Q. How long did you keep the Buick car?

A. Approximately two and a half months.

Q. How long did you keep the Dodge?

A. Well, I had it about two months, until this party drove out home.

Q. You had loaned it to Mr. Roberts?

A. Yes.

Q. Then you still had the Buick; then the FBI showed up and wanted to know where you got it, is that right?

A. That is right.

Q. Let me refresh your memory a little.

Isn't it a fact that all this little lady did was to introduce you to Paul Brinkley?

A. I never met Paul Brinkley.

Q. Isn't it a fact that he and his companion drove those cars over here the night before?

A. No, sir, I never have seen him.

Q. And you all were over there drinking the night before?

A. No, sir, I know I wasn't.

Q. That didn't happen?

A. No, sir.

Q. Isn't it a fact that at the time you came out there to make a payment on these cars of $1,000.00, wasn't it a fact that this little lady was to pick up $1500.00 from you?

A. No, sir.

Q. And that you chiseled it down to $1,000.00?

A. No, sir.

Q. And she turned around in your presence and called Paul Brinkley?

A. I never heard of Paul Brinkley until I saw him down here when she was up in Court.

Q. And that Paul Brinkley came over there and picked up the car?

A. He didn't do that, no, sir, he didn't.

Q. You didn't see these men at all?

A. No, sir.

Q. Do you know where the Tower Motel is?

A. Yes, sir.

Q. Were you ever out there during this time?

A. No, sir, not this time. I was out there one other time.

Q. Before or afterward?

A. Afterward.

Q. You kept this car how long? You said about six months?

A. About two or three months.

Q. And you loaned him the 1956 Dodge, you loaned it to Mr. Roberts, is that right?

A. That is right, yes, sir.

Q. Now, didn't you get some kind of title papers to that car you turned over to the FBI?

A. No, sir, I didn't.

Q. You never did?

A. No, sir.

Q. No title at all?

A. No, sir.

Q. Now, Mr. Adkins, you have nothing against Miss Smith, do you?

A. No.

Q. You met her here on one occasion before?

A. That is right.

Q. Isn't it true a man in Beaumont that was a mutual acquaintance of yours and Mrs. Smith's made the introduction, more or less?

A. No, sir; a man in Houston.

Q. As a result of that she called you up—that is true, isn't it?

A. Yes, sir.

Q. As far as you know, Mr. Adkins, you never saw this little lady bring those cars over there or drive either one of them?

A. The Buick was sitting right by her porch.

Q. You didn't see her bring it there?

A. She said it was hers.

Q. Did she say the Dodge was hers too?

A. Yes, sir.

Q. Both of them?

A. Yes.

Q. Did you think she was in the automobile business?

A. No, sir, but she had them there.

Q. Now, after you got these cars you went off in the Buick by yourself?

A. That is right.

Q. At no time was your bookkeeper over there?

A. No, sir.

Q. You handled this all yourself?

A. I went and got the money, or sent a man after the check.

Q. Was this transaction in cash?

A. In cash.

Q. You never did get any titles to these cars?

A. No, sir.

Q. Mr. Adkins, you are not wanting this jury to believe Mrs. Smith knew those cars were stolen in Kansas?

A. She was supposed to produce the title, so I waived having it, so then I got a call she would send me the title.

Q. Did you ask how she got the car to Texas?

A. The Buick car had Texas plates.

Q. Why did you want to change the plates?

A. I didn't change them.

Q. You didn't object to it?

A. No, because she said she needed it to get the title straightened out.

Q. Did you think there was anything funny about that?

A. No, sir.

Q. When she took those plates off, you didn't drive the car around six weeks without any plates on?

A. No, sir.

Q. What did you do?

A. Pulled the plates off of another car.

Q. That is a violation of the law, isn't it? Do you know that?

A. No, sir.

Q. You didn't know it is wrong to drive a car with a set of plates that don't belong to it?

A. I drove it just enough to keep the battery up.

Q. You were not using it too much, just enough to keep the battery up?

A. Yes, sir.

Q. Now, when the FBI showed up and got these cars you went to talking to them, didn't you?

A. I just answered their questions.
Q. Did you sign a statement for them?
A. Yes, sir, I sure did.
Q. When did you sign that statement?
A. In December about the 19th, I believe.
Q. About the 19th?
A. Yes, sir.
Q. Who did you give it to?
A. Mr. Pinkston and Mr. Larson.
Q. Is that Mr. Pinkston here conducting the government's side of the case?
A. Yes, sir.

Mr. Tessmer:
I would like to see that statement for the purpose of cross examination, that this witness has admitted he gave on a previous occasion.

The Court:
Can you produce it?

(By Mr. Tessmer):
Q. Did you make more than one statement to them?
A. Yes, sir.
Q. How many different statements did you make to them about Mary Kathryn Smith?
A. Two.
Q. When did you make the first one?
A. About December 19th.
Q. And when did you make the second one?
A. December 20th.

Mr. Tessmer:
We would like to have both of them. We have reason to believe they would throw light on this case.

Mr. Hamilton:

All right. (Handing instruments to Mr. Tessmer.)

(By Mr. Tessmer):

Q. Now, Mr. Adkins, I would like to hand you both of these statements. Look at them and tell me whether or not they are the ones you signed. Do you see your signature on there anywhere? Can you identify those, sir? Are those your signatures?

A. Yes, sir.

Q. The first statement they took on the 19th of December, is that right?

A. Yes, sir.

Q. Now, Mr. Adkins, you didn't get a receipt for that $1,000.00, did you?

A. No, sir, I didn't.

Q. Did you ask for one?

A. No, sir.

Q. There is no one that was present besides you and Mrs. Smith that can corroborate your testimony about that?

A. That is right.

Q. You were alone?

A. Yes, sir.

Q. The first time you made any about this case, about the fact that these were stolen automobiles, when was that, the first statement?

A. December 19th.

Q. That was the 19th of December?

A. Yes, sir.

Q. Now, I believe you testified you didn't know these cars were stolen, did you?

A. No, sir, I didn't know they were stolen.

Q. You thought you were just making an ordinary transaction, is that right?

A. That is right.

Q. Now, all you ever got was possession of those two cars, wasn't it?

A. That is right.

Q. You never got the title to either car?

A. No, sir.

Q. Is that true?

A. Yes, sir.

Q. Didn't you think it was strange you didn't get the title to those cars?

A. Yes, sir.

Q. After you didn't get the title for a month did you call Mr. Pinkston, with the FBI?

A. No, sir.

Q. Did you call the Dallas Police Department and ask them about it?

A. I had several calls from her in the meantime.

Q. Did you sue her?

A. No, sir, I didn't know where to sue her.

Q. You were satisfied the way it was?

A. No, sir, I wasn't satisfied.

Q. Why didn't you complain to the police? What was your reason? Were you protecting Mary Kathryn Smith?

A. No, sir.

Q. Why didn't you call the police?

A. I know she called up there and I just figured, every time she would call, I figured she would come through.

Q. That is why you didn't call the police. How long did you have these illegitimate license plates on the Buick?

A. About a month.

Q. Who was driving the car?

A. Nobody. It was only driven one time, I think.

Q. The truth of the matter is you bought those cars to resell them?

A. No, sir.

Q. You were in the surplus business?

A. Yes.

Q. When did you get in the automobile business? Was this the first time?

A. I never have been in it.

Q. Do you go around buying two cars at a time?

A. No, sir, I sure don't.

Q. Now, when you gave your first statement on the 19th of December you gave that one, I believe, to Mr. Pinkston, or Mr. Larson?

A. They were both there; I don't remember which one wrote it.

Q. Both of them there?

A. Yes, sir.

Q. When you gave the second statement about this case, they were not satisfied with the first one?

A. Yes.

Q. They came back to get one a little longer?

A. Yes.

Q. And you gave them a second statement?

A. Yes, sir.

Q. Was that the same two officers?

A. Yes.

Q. Now, did you ever call Mary Kathryn Smith, yourself—you did that, didn't you—on the telephone?

A. I might have once—maybe twice.

Q. Once or twice?

A. Once, I think. She called several times.

Q. But you called once?

A. I will say once.

Q. Are you sure about that? Did you call one time—where did you call her?

A. Well, I think the last time I heard of her she was at the Tower Court.

Q. Who did you hear about her from? The police, or the FBI?

A. No, sir, she called me from out there and I called her back.

Q. Did you go out there to visit her, and say, "Why aren't you getting that car title?"

A. I was out there one afternoon a short while.

Q. How long was this after the time you got the two cars that you were out there just a short while?

A. About six weeks or two months.

Q. Were you by yourself that time?

A. Yes, sir.

Q. You were a "lone wolfer" at that time too?

A. Yes, sir.

Q. Did you ask for your money back at that time?

A. No, sir, just asked for the title.

Q. Still wanted the title?

A. Yes.

Q. Had you tried to write in and get new titles anywhere else?

A. No, sir.

Q. Well, where did you get the license plates that you put on the Buick?

A. Off of a convertible.

Q. Was that your Pontiac convertible?

A. Yes, sir.

Q. You are not mad at Mary Kathryn Smith, are you?

A. I couldn't be very happy.

Q. You are not mad at her, are you? Are you mad at her because you bought two automobiles, that turned out to be stolen, for $1,000.00? Are you mad at her about losing the $1,000.00?

A. Well, you don't get too happy over it.

Q. Of course, that wouldn't influence your testimony against this little lady, would it, that you were a little mad at her?

A. I don't buy stolen stuff, to start with.

Q. You bought these two cars, didn't you?

A. Yes, sir.

Q. Now, did you have a fuss with her about thirty days later when you went to the motel and talked to her about why you were not getting these title papers?

A. I don't recall having a knock down and drag out.

Q. The police were not summoned?

A. No, sir.

Q. There was a fracas out there?

A. No, sir.

Q. When you went out there to see her didn't you meet Brinkley at that time?

A. No, sir.

Q. Did you meet Vernon Smith?

A. I knew she was married, but her husband was supposed to be in the army.

Q. She told you that?

A. Yes, sir, that is right.

Q. Now, when you gave the first statement you didn't put everything in that statement you put in the next one, did you?

A. No, sir; the Dodge was already picked up.

Q. Where was the Dodge when it got picked up?

A. Harold Roberts' House.

Q. Wasn't the reason for getting rid of that Dodge in such a hurry something went wrong with the Buick?

A. Didn't anything get wrong with the Buick.

Q. Didn't you say the Buick was recovered first?

A. No, sir.

Q. Which car was recovered first?

A. As far as my recollection, the Dodge.

Q. The Dodge was?

A. Yes, sir; I loaned it out.

Q. When did you begin to feel something was not right about this title—when did you finally get suspicious?

A. The day—December 19th.
Q. Was that when the FBI came to your house?
A. That is right.
Q. When was it you loaned the Dodge to Mr. Roberts?
A. About the 8th or 9th.
Q. Of December?
A. Yes, sir, I believe.
Q. When did the FBI pick up the Buick you had?
A. On the 19th of December.
Q. When did the FBI pick up the Dodge you loaned to your friend?
A. Well, if I remember correctly, it was along about one weekend before, while I was not in town.
Q. About the weekend when?
A. About the 16th or 17th.
Q. About the 16th or 17th?
A. I imagine.
Q. Where were you out of town at that time?
A. I was in Colorado Springs.
Q. Did you have the Buick with you in Colorado Springs?
A. No, sir.
Q. Where was the Buick then?
A. At my house.

The Court:
Counsel, we are at the adjourning hour. If you won't have but two or three minutes you may proceed.

Mr. Tessmer:
I have a little more I would like to ask this witness.

(By Mr. Tessmer):
Q. As the result of these statements you signed, that is how you got to be a witness in this case, is that right?

A. No, sir.

Q. Who talked to you about coming to Court and testifying against Mrs. Smith?

A. I was summoned.

Q. Who summoned you?

A. The United States Court.

Q. Did you ever talk to Mr. Hamilton and tell him all about this?

A. I talked to him once about it.

Q. When did you talk to him about it?

A. About the middle of last week.

Q. Did you discuss the facts in the case?

A. Yes, sir.

Q. And up until that time you had never seen this man Smith or this man Brinkley, had you?

A. No, sir.

Q. Now, did you give any more statements besides these two you have told us about?

A. No, sir.

Q. That is it?

A. That is it.

Q. You are not on bond for anything yourself, now, are you?

A. No, sir.

Q. In fact, you haven't been charged by the FBI with receiving stolen automobiles, have you?

A. No, sir.

Q. You are not worried about that, are you?

A. No, sir.

The Court:

All right, Gentlemen, don't make up your minds about the case until you have heard all the evidence.

And we will now adjourn until tomorrow morning at 9:30.

Morning Session
January 22, 1957
9:30 A.M.

The Court:
Are you ready to proceed, Gentlemen?

(By Mr. Tessmer):
Q. Mr. Adkins, yesterday while you were testifying, when was it you said you went to Colorado in your 1954 Pontiac?
A. I don't believe I went to Colorado in a 1954 Pontiac.
Q. What did you say, then?
A. I went by Braniff.
Q. Did you fly up there?
A. Yes, sir.
Q. Did you fly back?
A. Yes, sir.
Q. At the time of your trip did you have three cars, the Pontiac, the Buick and the Dodge?
A. Had two Pontiacs.
Q. What models?
A. 1954 and 1953.
Q. Which one did you take the license plates off of and put on the Buick?
A. The 1954.
Q. Is that the same car that the plates were off of when the police talked to you and picked up the Buick—what plates were on it then?
A. On the Pontiac?
Q. The Buick.
A. No, sir.
Q. There were no plates on it then?
A. I wasn't driving it.

Q. When did you stop driving the Buick—about what date?

A. That would be hard to say.

Q. Let us put it this way: You stopped driving it before you knew the FBI wanted that car?

A. That is right.

Q. Well, did you drive it as much as a month?

A. Very probably I did.

Q. To get the dates right: Do you say you bought these cars on September 20th?

A. Yes.

Q. And what date do you claim the FBI first showed up and talked to you about the cars and took them back?

A. About the 19th day of December.

Q. Somewhere in the middle there you stopped driving the Buick?

A. That is right.

Q. When did you loan the Dodge to Mr. Roberts—what date would that be?

A. It was about the middle of the first week in December.

Q. Would you say around the 7th?

A. I believe around the—

Q. The 4th?

A. I think it was around the 8th or 9th, maybe.

Q. At that time you hadn't given any statement to the FBI or talked to them?

A. No, sir.

Q. You loaned this car to Roberts—what is his full name?

A. Harold Roberts.

Q. As a matter of fact, he is charged with receiving that car, in federal Court, that Dodge, the one you loaned him?

A. I am not positive about that.

Q. Well, do you know about it?

A. I don't believe he is charged; I am not sure.

Q. He made bond on it, didn't he?

A. I don't know about that.

Q. Is he a friend of yours?

A. I have known him quite a few years; he is in the same kind of business; he worked extra for us several times.

Q. The car he was picked up with is the same car you bought, is that right?

A. Yes.

Q. Now, one more thing I would like to clear up—about this check. Would you repeat to the jury once more how you paid for the car and what went on about the check that you delivered to the people?

A. I went back to the store.

Q. Where did you leave Mary Kathryn Smith?

A. At El Sombrero Motel.

Q. What cabin was it?

A. I don't know the number.

Q. Would you know it if you saw it?

A. I might identify the locality.

Q. Then what did you do?

A. I went back to the store, I went to the bank with the check.

Q. And got the cash?

A. Made it to P. T. Clark, he takes the money back to my store, and I delivered it—the size of the bills, I couldn't swear to that, because I didn't make any record of it.

Q. You made the check out to Clark?

A. Yes.

Q. Who is he?

A. He works for me.

Q. Is he your bookkeeper?

A. He runs errands, puts up the stock, checks the warehouse, and stuff like that.

Q. Did you drive one of those new automobiles back to get the check?

A. No, sir.

Q. How did you get in touch with him?

A. I went to my place and he was working there.

Q. Then you drove back to the motel?

A. I went back in a taxicab.

Q. What went with your car?

A. I left it at the store.

Q. I thought you said you drove the Buick off yourself and came back in a cab and got the other car?

A. I will tell you like I told you yesterday.

Q. Yes.

A. I went back to the store in my car, got in the cab and returned to the cabin in a cab.

Q. All right.

A. Drove the Buick back, left it and came back in a cab and got the other car—and that is the same story I told you yesterday.

Q. You made two trips in a cab?

A. Yes, sir. You can check my original statement and it will tell you the same thing.

Q. Both original statements, the one on the 19th and the one on the 20th?

A. The 20th.

Q. You say this in both of them?

A. In the statement I gave you yesterday.

Q. And in the 20th statement?

A. That is right.

Q. But it is not in the one on the 19th, is it?

A. That is right.

Q. At that time, you tell this jury that there was nobody out there but Mary Kathryn Smith?

A. Yes.

Q. And she was in the cabin when you got there?
A. Yes, sir.
Q. Do you know a man named Ramsey?
A. Yes, sir, I sure do.
Q. He wasn't there then?
A. No, sir.
Q. He wasn't out there?
A. No, sir.
Q. You haven't checked the tourist court records of the cabin you were in, have you?
A. No, sir.
Q. And the check--did you give it to the government or did they take it?
A. They didn't take it—they asked to see it and I let them have it.
Q. Where is it now? Do they have it?
A. Yes, sir.

Mr. Tessmer:
That is all.

Re-Direct Examination.

(By Mr. Hamilton):

Mr. Hamilton:
Mark this.

(Said instrument marked Government's Exhibit Number 1.)

(By Mr. Hamilton):
Q. I will ask you if you can identify that?
A. Yes, sir, I can.
Q. What is it?

A. It is Check Number 8398, dated 9-20-56, made payable to P. T. Clark, for $1,000.00, drawn on Adkins Brokerage Company, Dallas, Texas.

Q. Any particular bank?

A. Hillcrest State Bank.

Q. Does that check show it was cashed?

A. Yes, sir, 9-20-56.

Q. Is this the check about which you have been testifying you sent Clark to get cashed?

A. Yes.

Mr. Hamilton:
I will offer it in evidence.

Mr. Tessmer:
No objection.

The Court:
Is the check offered in evidence?

Mr. Hamilton:
Yes, Your Honor.

The Court:
Let me see it.

The Court:
It is offered in evidence at this time and that is all.

(Said check marked Government's Exhibit Number 1, and reading as follows):

Re-Cross Examination.

(By Mr. Tessmer):

Q. Getting back to the 19th of December, you remember that date?

A. Yes, sir.

Q. Do you remember signing a statement for Agents Larson and Pinkston?

A. Yes.

Q. At that time the government had already recovered the 1956 Dodge?

A. Yes, sir.

Q. And had already recovered the 1956 Buick mentioned in the indictment?

A. They recovered it on the 19th.

Q. You had already given the statement?

A. I gave my statement at the same time, I believe.

Q. Where did you give your statement?

A. In my office.

Q. There was nothing wrong with your memory that date, was there?

A. Not that I know of.

Q. Now, Mr. Adkins, directing your attention to the 19th, you have testified in Court that this woman came over and propositioned you and sold you two automobiles, a 1956 Buick and a 1956 Dodge?

A. That is right.

Q. And here is the statement you identified at that time?

A. Yes, sir.

Q. I will read it:

"On or about September 20, 1956 I met Mary K. Smith in Dallas, Texas."

That wasn't true, was it? You had met her before that, hadn't you—before the 20th of September?

A. I met her on that date also.

Q. You had met her before, hadn't you?

A. Yes.

Q. "She told me she owned a 1956 Buick."

Is that right?

A. Yes, sir.

Q. "And needed some money. She told me she would sell the Buick to me for $1,750.00."

A. That is right.

Q. Didn't you tell the jury yesterday she was going to sell you two automobiles for $1,750.00? Isn't that right?

A. No, sir. On the 20th—

Q. I am talking about the 19th statement.

A. All right.

Q. Which is right, what you swore to yesterday or what you put in this statement?

A. The statement yesterday was the same as the statement there.

Q. It is?

A. Yes, sir.

Q. Didn't you tell the jury yesterday you bought two cars for $1,750.00?

A. That is right.

Q. In this statement you didn't say anything about buying anything but that Buick.

A. In that statement, that is right.

Q. When you gave this statement you were not holding out anything, were you?

A. No, sir; the Dodge was already recovered.

Q. The Dodge was already recovered.

A. Yes, sir.

Q. So was the Buick, wasn't it?

A. No, sir, not then.

Q. "I met Mary at a tourist court on Hines Boulevard in Dallas and she showed me the Buick. I paid Mary $1,000.00 for the Buick. She took off the license which

was on the Buick and I drove the Buick on to my home and I have it at my home now."

Is that right?

A. I drove it to the store.

Q. Your home is wrong?

A. Yes, sir.

Q. The "home" is wrong?

A. Yes, sir.

Q. "Mary has called me several times since that time I bought the Buick and she always gave me a story regarding the title for the Buick. Mary said I get the title and then I would give her the other $750.00."

A. Yes, sir.

Q. You didn't mention a word about buying two automobiles for the price of one. The FBI paid you a long visit?

A. I paid for one.

Q. You went back on the 20th?

A. I was called down here.

Q. Did they call you?

A. They called me.

Q. They were not satisfied with this first statement, were they?

A. No, sir.

Q. They wanted some more details, didn't they?

A. That is right.

Q. Then you gave them the statement of the 20th?

A. Yes, sir.

Q. And that is the first time you claim she sold you the Dodge too?

A. Yes, sir.

Q. Why didn't you tell them about it on the 19th? What did you have to hide?

A. Nothing.

Q. Didn't have anything to hide, because they had already been repossessed. Who suggested that you tell the FBI about the 1956 Dodge? Did they ask you about it?

A. Yes, sir.

Q. Now, Mr. Adkins, I am going to refer to your statement of the 20th, as follows:

"On or about September 20, 1956 at Dallas, Texas I received a phone call from Mary Smith."

A. That is right.

Q. "I then met her for lunch and went on after lunch to the El Somberero Motel with her."

I thought you said she was already out there?

A. She was.

Q. This is not right about going to lunch and going out there?

A. I was out there and went to lunch with her.

Q. Then it is not right the way this is written—do you want to correct this?

A. No.

Q. You want to stand on it?

A. Yes, sir.

Q. "While we were there she showed me a 1956 Buick Century sedan, colored white over coral, and told me that it was her car."

A. That is right.

Q. She said her husband was in the service and would soon be discharged and she was in need of money."

A. That is right.

Q. "She offered to sell me the Buick for $1,750.00. I agreed to give her $1,000.00 then and the remaining $750.00 when she delivered me the title. I left and got the $1,000.00 from the bank."

I thought you told us you didn't leave, and you had your man come out there and take the check himself?

A. You can always re-track the exact operation after 30 or 60 days.

Q. It has been a long time?

A. When I went to get the check for the FBI I discovered it was picked up by Clark, which is nothing unusal, we send him to the bank all the time.

Q. This was in December, long after you bought the car, that you were giving this statement?

A. Yes.

Q. You had already been thinking about it from the day before when you gave that other statement?

A. I didn't have to run to the checkbook to check on that, it was immaterial, the cash was received at the bank.

Q. Why did you make the check out to your bookkeeper?

A. It wasn't.

Q. To the man who worked for you, P. T. Clark, isn't it?

A. We do that quite often.

Q. You didn't owe Clark any money, did you?

A. No.

Q And Clark was not the one who sold you this automobile, was he?

A. No, sir.

Q. But you made the check out to your employee?

A. I can show you other checks made out to him.

Q. "I left and got the $1,000.00 from the bank and returned to the motel."

That wasn't true?

A. I see nothing wrong with it.

Q. Did you leave to get $1,000.00 from the bank or did you have Clark go get it?

A. He went and got it—that is immaterial—it is $1,000.00.

Q. "And gave her the $1,000.00, then she showed me the 1956 Dodge sedan."

I thought you told the jury you saw these two cars and they were parked side by side?

A. No, sir, I didn't.

Q. Where were the cars?

A. One of them parked next to the tourist cabin, and when I came back they were parked oustide.

Q. You told the jury just like you tell us today?

A. Yes, sir.

Q. "She then showed me the 1956 Dodge sedan colored dark blue, light blue and white top."

Now, do you testify you went out there and made a deal with her for this Buick? Up to that time you hadn't thought about buying the Dodge?

A. No, sir.

Q. Didn't you tell the jury here yesterday you made a flat trade for the two automobiles?

A. No, sir, I didn't.

Q. You testified here in Court yesterday—you didn't tell them that, "She then showed me the 1956 Dodge sedan colored blue, light blue and white top, and told me the Dodge went with the Buick?" After she already had the $1,000.00 for one car she was going to give you another one, is that right?

A. Yes, sir.

Q. "She told me she would give me the title for the Buick but never claimed to have any title for the Dodge and never offered to give me any title for the Dodge."

Q. Who wound up with this Dodge? Is that Roberts?

A. Yes.

Q. Now, in your statement did you make this statement: "I thought that the offer for sale of the Buick for $1,750.00 was a legitimate business proposition."

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You still think so?

A. Yes, sir.

Q. And when she threw in the 1956 Dodge for no extra charge, and without any claim of title to it, did you assume it must be a stolen car, or must be something wrong with the deal, is that right?

The statement says: "But when she threw in the 1956 Dodge at no extra charge and without any claim of title to it I assumed that it must be a stolen car or that there was something wrong with the deal."

Q. Is that in your statement?

A. Yes, sir.

Q. You didn't back out at that time?

A. No, sir.

Q. I am talking about the 20th of September—you went ahead with it, didn't you?

A. Yes, sir.

Q. Now, you made these two conflicting statements to the same agents, didn't you?

A. Yes, sir.

Q. And they were not satisfied with the first statement, were they, because it didn't mention the Dodge?

A. That is right.

Q. And that there was not any title to it. You knew these facts when you gave that statement on the 19th, didn't you?

A. Yes.

Q. To be fair about it, you don't know whether this little lady knew those cars were stolen, of your own knowledge?

A. To do what?

Q. To be fair with the jury, you don't know of your own knowledge that Mary Kathryn Smith knew those cars were stolen, do you?

A. I certainly do think so.

Q. You do now?

A. Yes.

Q. Did you think so on the 19th of December when you gave the first statement?

A. Yes, sir.

Q. Did you think so when you said you thought it was a legitimate business deal?

A. No, I thought it was a legitimate business deal, was on the 20th of September.

Q. You still thought so on the 19th, when you put it in that statement. What did you put in there you thought it was a legitimate business deal for, why did you do that? I want to know when this thing of illegitimate got in your mind. Was it after you became a witness for the government?

A. On the 19th of December.

Q. To straighten it out once more, you went out there and you made a deal for a Buick?

A. That is right.

Q. Then you talked about a Dodge, and you sent the man to get the $1,000.00?

A. I left.

Q. You left and got the $1,000.00?

A. Yes, sir.

Q. After you had paid for the Buick that you thought was a legitimate business deal, this lady threw in another brand new automobile that you hadn't thought about?

A. That is right.

Mr. Tessmer:

Your witness, Counsel.

Mr. Hamilton:

Thank you, Mr. Tessmer.

Re-Direct Examination.

(By Mr. Hamilton):

Q. Mr. Adkins, of course you don't know, except by what a person did, what they might have known in their mind, unless they specifically stated to you a fact?

A. That is right.

Q. But you do know that the license plate was changed on one of those cars while you were out there?

A. Yes.

Q. You know Mary Smith knew that?

A. Yes.

Q. You also know you bought the two 1956 automobiles in the year 1956 for $1,000.00, don't you?

A. Yes, sir.

Q. You also know that you never did get any titles on those cars, don't you?

A. Yes, sir.

Q. And I believe you testified she discussed titles with you?

A. Yes.

Q. And never came through on those titles?

A. That is right.

Q. Now, you, as a reasonable man, of course, might assume from those facts that she knew those automobiles were stolen?

Mr. Tessmer:

I object to that, that calls for a conclusion that is within the province of the jury, what he might assume.

Mr. Hamilton:

I will withdraw the question.

(By Mr. Hamilton):

Q. Were you asked about this Dodge on the first statement you gave?

A. I don't believe I was.

Q. You were asked about it the second time, weren't you?

A. Yes.

Q. And that Dodge was in somebody else's possession, wasn't it?

A. Yes, sir.

Q. Now, there is no inconsistency between those two statements, other than the fact you were not asked about the Dodge on the first one, is that right?

A. Yes, sir.

Q. And you didn't volunteer any information along that line, did you?

A. No, sir.

Mr. Hamilton:

That is all.

Mr. Tessmer:

I would like to mark those statements for evidence and let the jury see whether there is any inconsistency.

Mr. Hamilton:

I think counsel has pointed out any inconsistencies.

The Court:

If there are any that is for the jury to determine and it cannot be determined further unless you want to cross examine him.

Mr. Tessmer:

I want to offer the statements themselves in evidence.

The Court:

I was about to say to the District Attorney that it is not clear in the Court's mind and may not be to the jury, just who made the check and who was the payee. What were the circumstances about the check?

Mr. Hamilton:

I believe, and I am subject to correction, but I believe that the witness testified that he made the check and signed the check and he signed it in favor of an employee to go and get the money for him and that this employee took the check and got the cash and returned it to him.

The Court:

And he paid the $1,000.00 in cash?

Mr. Hamilton:

Yes.

Again, I would like to say I don't feel these statements should properly be received in evidence. The witness has been on the witness stand, he has testified as to the transaction, he has testified as to what was in both of those statements.

The Court:

I don't get what you are addressing the Court about?

Mr. Hamilton:

Mr. Tessmer asked the Court to admit in evidence these statements that this witness gave the FBI. I object to that on the ground that I don't think he has shown that there are any inconsistencies, or that he made any inconsistent statements.

The Court:

I will admit both of them.

Mr. Tessmer:
I will have them marked.

(Said instruments marked Defendant's Exhibits Numbers 1 and 2, and reading as follows:)

(DEFENDANT'S EXHIBIT NUMBER 1:)

December 19, 1956,
Dallas, Texas

I, Cecil R. Adkins, make the following free and voluntary statement to Warren A. Larson who has identified himself to me as a Special Agent of the FBI. I have been told I do not have to make a statement and any statement I make may be used against me in a Court of law. No threats or promises have been made to me regarding this statement. I have been told I may consult a lawyer.

I am 40 years old and have a store doing business at 5800 Maple Ave. Dallas, Texas.

On or about Sept. 20, 1956 I met Mary Smith in Dallas, Texas. She told me she owned a 1956 Buick and needed some money. She told me she would sell the Buick to me for $1750.00. I met Mary at a tourist court on Harry Hines Blvd. in Dallas and she showed me the Buick. I paid Mary $1,000 for the Buick. She took off the license which was on the Buick and I drove the Buick on to my home and have it at my home now. Mary has called me several times since that time I bought the Buick and she always gave me a story regarding the title for the Buick. Mary said I could get the title and then I would give her the other $750.

I have read this statement and it is true and correct to the best of my ability, I have initialed both pages and corrections.

(S.) CECIL R. ADKINS.

Witness:

(S.) WARREN A. LARSON, Special Agent, F.B.I. Dallas, Texas 12/19/56.

(S.) NAT A. PINKSON, Special Agent F.B.I. Dallas, Texas.

(DEFENDANT'S EXHIBIT NUMBER 2:)

Dallas, Texas, 12/20/56.

I, Cecil R. Adkins, make the following voluntary statement to Nat A. Pinkston and Warren A. Larson known to me to be Special Agents of the F.B.I. No threats or promises of any kind have been made to me to cause me to make this statement. I know that I do not have to make a statement and that any statement I do make may be used against me in Court. I have been advised that I am entitled to have an attorney if I want one.

On or about Sept. 20, 1956 at Dallas, Texas I received a phone call from Mary Smith. I then met her for lunch and went on after lunch to the El Sombrero Motel with her. While we were there she showed me a 1956 Buick Century sedan, color white over coral, and told me that it was her car. She said her husband was in the service and would soon be discharged and she was in need of money. She offered to sell me the Buick for $1750.00. I agreed to give her $1,000.00 then and the remaining $750.00 when she delivered me the title. I left and got the $1,000.00 from the bank, returned to the motel and

gave her the $1,000.00. She then showed me a 1956 Dodge sedan color dark blue, light blue, and white top. and told me that the Dodge went with the Buick for the $1,000.00. She told me she would get me the title for the Buick but never claimed to have any title to the Dodge and never offered to give me any title to the Dodge. I left the $1,000.00 and took both the 1956 Buick and the 1956 Dodge. I used the Buick, from which Mary Smith had removed the licenses before letting me have it, on several occasions and later stored it in my garage at my residence. I left the Dodge at my place of business and on or about Dec. 8, 1956 loaned it to Harold Roberts. Roberts never returned this car to me. The Buick was still stored in my garage on December 19, 1956 when I surrendered it to the F.B.I. on being called on for it. I thought that the offer for sale of the Buick for $1750.00 was a legitimate business proposition but when she threw in the 1956 Dodge at no extra charge and *without any* claim of title to it I assumed that it must be a stolen car or that there was something wrong with the deal.

Several times after I got these cars Mary Smith contacted me and on each occasion she said that she was going to get me the title to the Buick, however she never offered me any title to the Dodge.

C.R.A.

I have read the above statement on this and two other pages. It is true and correct.

CRA (S.) C. R. ADKINS.

Witnessed:

(S.) NAT A. PINKSTON, Special Agent, FBI Dallas, Texas.

(S.) WARREN A. LARSON, Special Agent, FBI, Dallas, Texas.

Mr. Tessmer:
That is all.

NAT A. PINKSTON, being first duly sworn, examined in chief by Mr. Hamilton, testified as follows:

Q. State your name, please.
A. Nat A. Pinkston.
Q. Your occupation?
A. Special Agent, Federal Bureau of Investigation.
Q. How long have you been such a special agent?
A. Approximately 17 years.
Q. How long have you been here in Dallas, assigned to the Dallas office?
A. A little over nine years.
Q. Has your specialty been with reference to automobiles?
A. Yes, sir.
Q. And violations of what is commonly known as the Dyer Act?
A. Yes, sir.
Q. I will ask you if you investigated this particular case for the FBI?
A. Yes.
Q. And you know the defendant here?
A. Yes, sir.
Q. The woman, Mary Smith?
A. I do.
Q. Mr. Pinkston, I will ask you if your investigation into this matter extended over a period of time prior to the 20th day of December, 1956?
A. Yes, sir, it did.
Q. And did you take the statements from the witness Cecil Adkins about which there has been testimony?

A. I took one of them and I was present when the other was taken.

Q. You took which one?

A. The one given on the 20th.

Q. And you were present when the one on the 19th was given?

A. Yes, sir.

Q. Subsequent to the taking of the statements was there a complaint filed against Mary Smith?

A. There was a complaint filed against Mary Smith on the evening of the 19th of December.

Q. Do you know whether she was arrested as a result of that complaint?

A. She was.

Q. When was she arrested?

A. On the night of December 19th.

Q. I will ask you if you saw her on that night after she was arrested?

A. No, I didn't see her until the morning of the 20th.

Q. You saw her on the morning of the 20th?

A. Yes, sir.

Q. When was she afforded a hearing before the United States Commissioner?

A. At 1:00 o'clock p.m. on the 20th of December, 1956.

Q. Mr. Pinkston, did you have a conversation with her on the morning of the 20th?

A. I did.

Q. And did you tell her who you were?

A. Yes.

Q. And that you were with the FBI?

A. Yes.

Q. Was there anyone else present?

A. Yes.

Q. Who was that?

A. Special Agent Warren A. Larson, with the FBI, and Detective William Shumate, Dallas Police Department, Auto Theft Bureau.

Q. Did you explain to her she didn't have to make a statement?

A. Yes.

Q. Did you explain to her any statement she made might be used against her in a Court at law?

A. Yes.

Q. Did you make any threats to her?

A. No.

Q. Did you make any promises to her?

A. No, sir.

Q. Did she speak with you about this matter?

A. Yes.

Q. Was it voluntary, insofar as you were able to determine?

A. Yes.

Q. Now, did she give you a full statement?

A. Yes, sir.

Q. I will ask you if that statement was reduced to writing in her presence?

A. Yes.

Q. And did she, after you had taken that statement, read it; or was it read to her?

A. She read it and it was read to her.

Q. What did she say about it?

A. She stated that the statement and the contents therein were true and correct.

Q. Did she say whether or not she wanted to sign it?

A. Yes.

Q. What did you say to her about that?

Mr. Tessmer:

I object to that. That is an attempt to use the silence of the defendant, or action of the defendant, under pres-

sure, as an inference against her. The next question, I guess, will be, "Did she sign it?" and they will attempt to use that to discredit the defendant. She was up there by herself, in the presence of two agents, under arrest, her constitutional rights—

The Court:

The examination up to now has made it in order to admit the testimony. If he has not covered the situation you might point out to the Court what it is.

Mr. Tessmer:

They are trying to use it as an inference against this defendant, the fact she might not have signed what they wrote down.

The Court:

That goes to the probative value of the man's testimony. If he forged something that is for the jury.

Mr. Tessmer:

We are contending they are trying to infer, after they wrote down what she said, that she didn't sign it, and use that against her.

The Court:

I will have to hear it.

Mr. Tessmer:

Thank you, Your Honor.

(By Mr. Hamilton):

Q. Did you testify she read what you had written down?

A. Yes.

Q. And it was also read to her?

A. Yes.

Q. And she at the same time stated it was true and correct?

A. Yes, sir.

Q. Now, I will ask you if you have your notes of that date that were read to her after she made this statement?

A. Yes.

Q. Do you have them with you?

A. I have the statement.

Q. I would like for you to read the statement, if you will?

Mr. Tessmer:

We object and except to this, it hasn't been shown that this witness signed any statement. He may testify as to what this witness told him. This is objectionable, but he may not bolster his testimony by what he wrote down.

The Court:

I understand the witness to say he wrote down what she said and read it over to her and she still didn't sign at that time. That is what I remember the testimony to be.

Mr. Hamilton:

That was the point I was trying to bring out when Mr. Tessmer objected. I was asking the witness if she stated it was true, and then before I asked him if she didn't sign it Mr. Tessmer objected.

The Court:

After you had prepared the statement did you read it to her?

A. Yes.

The Court:
Did she sign it?
A. No.

The Court:
All right, you may state what took place. Did you ask her to sign it?
A. Yes.

The Court:
You may now state what took place.

Mr. Tessmer:
Our objection goes to the fact that it is an inference against this defendant, outside of the fact she wouldn't sign it It is a violation of her constitutional rights. It is an attempt to get before the jury a statement she never signed, an attempt to show she is guilty because she wouldn't sign it.

The Court:
Overrule the objection.

Mr. Tessmer:
We except.

(By Mr. Hamilton):
Q. I will ask you to state what Mary Smith told you that morning of December 20, 1956?
A. Shall I read this?
Q. You may refer to it.

The Court:
As I understand it, she told you certain things and you wrote them down?
A. Yes, sir.

The Court:

And you have what you wrote?

A. Yes, sir.

The Court:

And she didn't sign it and you are reading it as a recorded conversation?

A. Yes, sir.

The Court:

I will admit it.

Mr. Tessmer:

Will Your Honor instruct the jury that her failure to sign that document is no evidence before the jury?

The Court:

I don't see how the fact that she refused to sign it can be treated as any circumstance against her. I don't think there is a juror in the box would think so.

Mr. Tessmer:

Thank you, Your Honor.

(By Mr. Hamilton):

Q. State the substance of what she said.

A. "On or about September 18, 1956 I was in Wichita, Kansas with Paul Brinkley and my husband, Vernon Harold Smith, and we were planning to go into the bootlegging business."

Mr. Tessmer:

We object to that as an extraneous offense, it doesn't involve moral turpitude. We ask that the Court instruct the jury to disregard it.

The Court:

Gentlemen of the Jury, the fact that they were intending to go into the bootlegging business or that they were preparing into other criminal activities, they are not being tried for those activities and that will be eliminated from your mind and not be considered as a circumstance, or any evidence in this case.

Mr. Tessmer:

I move for a mistrial, based upon that.

The Court:

Overrule the objection.

Mr. Tessmer:

We except.

A. "Paul and my husband had obtained discarded out of state license plates and we had these plates and luggage for the three of us in my Pontiac car as we were preparing to come to Dallas, Texas. I drove them there in my Pontiac to a drive-in across the street from the car lot of the Ben Robinson Buick Company and let them out. I then drove on down the street. Paul and my husband then joined me with Paul driving a 1956 Buick and my husband driving a 1956 Dodge. They changed the license plates on the Buick and Dodge that belonged to Paul Brinkley. On arriving in Dallas Paul informed me that the Buick and Dodge were stolen cars and that he wanted to sell them."

Mr. Tessmer:

We object to what Paul informed her, it is hearsay. It is an attempt to put before the jury what a man said that is not on trial here.

The Court:
I think it would be hearsay against Paul.

Mr. Tessmer:
It would be hearsay as to what Paul told her.

The Court:
Go ahead.

Mr. Tessmer:
We except.

A. "On arriving at Dallas Paul informed me that the Buick and Dodge were stolen cars and that he wanted to sell them. I was acquainted with a man named Cecil R. Adkins who operates the Army Store on Maple Avenue near Inwood Road in Dallas, Texas. And I called him by phone and informed him that I had a man who wanted to talk to him about stolen cars that I had mentioned to him when I had met him and had a date with him a week or two before. Adkins told me that he didn't want to meet the fellow with the cars but that he was interested in buying them. Adkins asked me to have the cars taken to the El Sombrero Motel and to meet him at that motel. Paul and my husband took the cars to the El Sombrero and parked them and returned to the motel where we were staying. I then met Cecil Adkins at the El Sombrero. He examined both the stolen Dodge and the stolen Buick and offered me $1,000.00. I told him that Paul wanted more money than that for the cars and that Paul would be right up to the El Sombrero. Cecil still didn't want to meet Paul so, he left the $1,000.00 on the table in the cabin at the El Sombrero. I told Cecil to take the license plates off the stolen cars and leave them in the Pontiac that I was driving. Cecil then drove the Buick

away, and a short time later I noticed that the Dodge was also gone. I took the $1,000.00 and gave it to Paul when he arrived at the El Sombrero Motel."

Mr. Tessmer:

We again move to strike the testimony in this case with reference to that written statement as to the fact, and which she would not sign, we further move to strike the evidence from the jury concerning the license plates; we further move that the entire written document read to the jury be withdrawn, unless they offer it as original evidence, as past recollection recording. He is supposed to be refreshing his mind, and yet he has read the entire statement to the jury.

The Court:

If she had made it as an oral statement, anybody had written it down, any witness listening to it could have testified as to what she said.

Mr. Tessmer:

But not with reference to the liquor business.

The Court:

We have put a limitation on that testimony and have told the jury that it could not be considered as any evidence tending toward her conviction, and they will entertain no ill feeling or prejudice against her because of it.

(By Mr. Hamilton):

Q. Now, Mr. Pinkston, you testified that was written down as the defendant gave you the story, is that right?

A. Yes, sir.

Q. And at the completion of her story I believe you have testified that you handed her a piece of paper and

she read it, and then you read it to her, and she said, "Yes, it is true and correct", is that right?

A. Yes, sir.

Mr. Hamilton:

That is all.

Cross Examination.

(By Mr. Tessmer):

Q. When did you take this statement?

A. On the morning of December 20, 1956.

Q. Isn't it a fact that she told you she didn't know those cars were stolen until the morning of her arrest?

A. No, sir.

Q. She didn't tell you that?

A. No, sir.

Q. Never did?

A. No, sir.

Q. Why didn't you put down there when she knew they were stolen in the statement?

A. I did.

Q. You wrote this in your own handwriting, didn't you?

A. Yes, sir.

Q. And you wrote this statement after you had taken the second statement from your own witness, Adkins?

A. No.

Q. Before?

A. Yes.

Q. Then you went back to Adkins and got another statement?

A. Yes.

Q. And threw in the Dodge, is that it?

A. Yes, sir.

Q. Who was present when you were questioning this little lady, you and Larsen and Shumate, was he there?

A. I don't think that is a proper question.

Q. Who was present when you questioned her then?

A. Mr. Larsen, Mr. Shumate and myself.

Q. Shumate is a Dallas detective, isn't he?

A. Yes, sir.

Q. Was her husband present?

A. No.

Q. Did she have a lawyer there with her?

A. No.

Q. Where were you?

A. On the fourth floor of the Dallas jail.

Q. How long did you talk to her?

A. Approximately forty-five minutes to an hour.

Q. Well, did you just start writing down everything she said as she said it?

A. No.

Q. Or did you put in what you wanted the facts to be? Did you rearrange the context of it?

A. I put it down in chronological order.

Q. In chronological order?

A. Yes, sir.

Q. Did she say, "I am Mary Smith, and I make the voluntary statement to Nat A. Pinkston"?

A. No, sir.

Q. That is your own language, isn't it?

A. Yes, sir, that was a warning.

Q. "And Warren A. Larson, known to me to be Special Agents of the FBI."

Did you say that or did she say it?

A. That is the warning paragraph.

Q. Then it was your language?

A. Yes.

Q. "I know that I don't have to make a statement and that any statement I do make may be used against me in Court."

Did she tell you that?

A. No, sir. The first paragraph is what I told to her.

Q. That much of it is your language, is that right?

A. The first paragraph is my language, yes, sir.

Q. "I have been told that I am entitled to an attorney if I want one."

Is that right?

A. Yes, sir.

Q. You didn't wait for her to get one. did you?

A. She didn't ask for one.

Q. Did you think she needed one?

A. That is a matter of opinion.

Q. "On or about September 18, 1956 I was in Wichita, Kansas with Paul Brinkley and my husband, Vernon Harold Smith."

That is what the Court ruled was not admissible.

A. Yes.

Q. That was her language, wasn't it?

A. Yes, sir.

Q. She never admitted to you she took those cars?

A. That she took the cars?

Q. Yes.

A. No.

Q. Or that she knew they were stolen at that time?

A. At what time?

Q. At the time they were taken in Kansas?

A. That is correct.

Q. As a matter of fact, she wasn't very sure when the cars were taken, according to the statement she gave you?

A. That is correct.

Q. She was some blocks away?

A. Yes.

Q. And she was driving her own automobile, wasn't she, the Pontiac, that is in the statement, isn't it?

A. Yes.

Q. That was not a stolen car she was driving, was it?

A. No.

Q. The only people driving the stolen cars were Paul Brinkley and Vernon Smith?

A. Yes, sir.

Q. And as a result of your investigation they were indicted for theft of those cars?

A. Yes, sir.

Q. And the transportation of them?

A. Yes.

Q. You heard Adkins testify he never saw Paul Brinkley until he saw him in the hall?

A. No, sir, I didn't hear him say that.

Q. That he never had talked to Brinkley until he saw him in the hall?

A. He said until he saw them at a hearing.

Q. That doesn't line up with your statement, does it?

A. In what way?

Q. About this man Adkins ever talking to Brinkley and negotiating the price over the phone, that is what you have in the statement?

A. I think you are misconstruing my statement.

Q. Let us read it and see:

"I was acquainted with a man named Cecil R. Adkins who operates the Army Store on Maple Avenue near Inwood Road in Dallas, Texas. And I called him by phone and informed him that I had a man that wanted to talk with him about the stolen cars that I had mentioned to him when I had met him and had a date with him a week or two before."

Was that your language?

A. That was her language.

Q. "Stolen" was her language?

A. Yes.

Q. And this was on the 20th of December?

A. Yes.

Q. "That I had mentioned to him when I had met him and had a date with him a week or two before. Adkins told me that he didn't want to meet the fellows with the cars but that he was interested in buying them."

A. Yes, sir.

Q. "Adkins asked me to have the cars taken to the El Sombrero Motel and to meet him at that motel. Paul and my husband took the cars to the El Sombrero and parked them."

Is that her language?

A. Yes.

Q. Do you agree with that?

A. Yes.

Q. Did he then meet Cecil Adkins at the El Sombrero and examine both of the stolen cars, did you put the word "stolen" in there or did she?

A. You have left out part of the statement.

Q. I will read it in sequence:

"I then met Cecil Adkins at the El Sombrero, he examined both the stolen Dodge and the stolen Buick and offered me $1,000.00."

Is that what she said?

A. Yes, sir.

Q. "I told him that Paul wanted more money than that for the cars and that Paul would be right up to the El Sombrero."

Who is that? Paul Brinkley?

A. Yes.

Q. He is the man who was indicted and convicted of transporting cars?

A. Yes.

Q. He is the man you talked to in the Marshal's Office this morning?

A. Yes.

Q. And is held in this case, is that right?

A. No, sir.

Q. You did have a conversation with him this morning?

A. Yes, sir.

Q. "Cecil didn't want to meet Paul so he left the $1,000.00 on the table in the cabin at El Sombrero. I told Cecil to take the license plates off of the stolen cars and leave them in the Cadillac that I was driving."

Is that her words?

A. I think you misread one word.

Q. What is that?

A. I think it is "put them in the Cadillac."

Q. It has "have".

A. It says "leave them".

Q. It says "leave"?

A "Leave them."

Q. In this writing it looks a little like "have", doesn't it?

A. Yes, sir.

Q. "Leave them in the Cadillac that I was driving. Cecil then drove the Buick away and a short time later I noticed that the Dodge was also gone. I took the $1,000.00 and gave it to Paul when he arrived at the El Sombrero Motel."

Now, Mr. Pinkston, in your investigation, and training of nine years with the FBI, when you investigate a case of this nature your purpose always is to try to get a written statement, isn't it?

A. Yes.

Q. And if the statement is for the defendant you don't sometimes reduce it to writing, if it is not inculpatory, if it doesn't spell out guilt, you don't record it?

A. I frequently do.

Q. Well, do you offer it in evidence on behalf of the defendant? You exercise some opinion about what statement you take?

A. Yes.

Q. And if it is for them you don't often use it, do you?

A. Not if they are being prosecuted.

Q. Well, this lady is.

A. Yes, sir.

Q. After you had written all this statement out she wouldn't sign it, according to your testimony?

A. That is correct.

Q. Well, she had freely talked with you about this thing, hadn't she?

A. Yes, sir.

Q. Isn't it true she told you at the time he went over there to negotiate this thing she was sent over by Paul Brinkley to pick up some money, didn't she tell you that?

A. Yes, sir.

Q. And that Brinkley and her husband were selling those cars and not herself?

A. She didn't make that statement.

Q. You knew that was the situation, didn't you? Did you learn who got the money, the $1,000.00?

A. I never did find out definitely who got the money.

Q. Did you ask Brinkley?

A. Yes.

Q. He didn't deny it, did he?

A. He didn't deny getting part of it.

Q. He didn't say he got part and gave her part, did he?

A. I have never been able to get anybody to tell me how much of the money anybody did get.

Q. There were two men out there, Smith and Brinkley?

A. Yes.

Q. They were arrested?
A. Yes, sir.
Q. You talked to them?
A. Yes, sir.
Q. They signed statements, didn't they?
A. They signed statements, yes, sir.
Q. You have those statements they signed?
A. Yes, sir.
Q. In the other case?
A. Yes, sir.
Q. That is true, isn't it?
A. Yes, sir.
Q. Now, as a matter of fact, Mr. Pinkston, when you recovered the Buick where was it?
A. It was in Cecil Adkins' garage.
Q. And at that time had the wrong license plates on it?
A. No, sir.
Q. What plates did it have?
A. None at all.
Q. Where did you recover the Dodge?
A. In the garage at Harold Roberts' residence.
Q. Did it have plates?
A. No, sir.
Q. Did you recover the Buick before the Dodge or the Dodge before the Buick?
A. The Dodge before the Buick.
Q. What cabin did this take place in in the El Sombrero, do you know that?
A. No, sir.
Q. You didn't determine what cabin they had out there?
A. No.
Q. Wasn't it Cabin 26, Mr. Pinkston, at the El Sombrero?

A. Mr. Tessmer, I didn't get into this investigation until about a week after it started. Mr. Larson conducted the investigation at the El Sombrero and I didn't know the details.

Q. Would Mr. Larson know about that, if he handled it?

A. Yes.

Q. Who is Harold Roberts?

A. I believe his full name is there, Harold Charley Roberts or Charley Harold Roberts.

Q. Who is he?

A. He is a white male about 49 years of age.

Q. Is he charged up here with anything?

A. Yes, sir.

Mr. Tessmer:

Mark this.

(Said instrument marked DEFENDANT'S EXHIBIT NUMBER 3, and reading as follows:)

Form A. O. 91 Complaint.

United States District Court for the Northern District of Texas.

Commissioner's Docket No. 20.

United States of America,
versus
Charley Harold Roberts.

Case No. 3955.

Complaint for Violation of U.S.C .Title 18, Section 2313.

Before William M. Hill, Dallas, Texas.

The undersigned complainant being duly sworn states:

That on or about December 8th, 1956, at Dallas, Texas in the Northern District of Texas Charley Harold Roberts did on or about December 8, 1956, did receive, conceal, store, barter, sell, and dispose of a 1956 Dodge and a 1956 Oldsmobile which vehicles had been stolen, transported in interstate commerce from Wichita, Kansas to Dallas, Texas, and were then and there in interstate commerce.

And the complainant further states that he believes that .....are material witnesses in relation to this charge.

(S.) WARREN A. LARSON,
Special Agent, F.B.I. Dallas, Texas.

Sworn to before me, and subscribed in my presence, Dec. 18, 1956.

(S.) WILLIAM M. HILL.

(By Mr. Tessmer):

Q. Is this the same Charley Harold Roberts Mr. Adkins said he knew?

A. Yes, sir.

Q. And the one he said he loaned the 1956 Dodge automobile to?

A. Yes, sir.

Q. I hand you Defendant's Exhibit 3, I will ask you if you can identify it?

A. Yes, sir.

Q. It is the complaint filed by Warren A. Larson, Special Agent, Federal Bureau of Investigation?

A. Yes, sir.

Q. Is that the same Mr. Warren A. Larson that was your partner and helped you take the oral statement from this little lady, that she wouldn't sign?

A. Yes.

Q. What was this complaint filed against Mr. Roberts for?

A. For receiving and concealing, I believe it also covers storing, bartering and selling and disposing of two automobiles that had been transported in interstate commerce.

Q. One of them the Dodge?

A. Yes, sir.

Q. That is the same car Mr. Adkins had?

A. Yes, sir.

Q. Mr. Adkins is not charged, is he?

A. No, sir.

Mr. Tessmer:

I offer the instrument in evidence, marked Defendant's Exhibit 3.

Mr. Hamilton:

Are you sure that is word for word?

Mr. Tessmer:
It it is not we will substitute the original.

Mr. Hamilton:
I would like to see the original; if you tell me it is copied word for word I will admit it.

Mr. Tessmer:
Mr. Rankin copied it.

Mr. Hamilton:
Is that correct, Mr. Rankin?

Mr. Rankin:
Yes, sir.

Mr. Tessmer:
There might be something misspelled.

Mr. Hamilton:
I am not worried about the spelling.

Mr. Tessmer:
We offer it in evidence, marked Defendant's Exhibit 3.

The Court:
I believe the witness has testified that the Dodge mentioned in this paper was the same car now under inquiry. The language in this paper is more or less a collateral matter. I think the extent to which the paper might be offered would be the date and the name of it, the character of it, to show there was a charge filed against Charley Harold Roberts concerning the Dodge car. I don't think I will authorize reading it in evidence.

Mr. Tessmer:
May we have our exception to that?

The Court:
Yes.

Mr. Tessmer:
Let the record show we would have read the document to the jury in its entirety.

(By Mr. Tessmer):
Q. Now then, Mr. Pinkston, this was not the only time you wrote any statement down that you took from the defendant, you wrote some more down on another occasion?
A. I took another statement at the same time.
Q. Where is that other statement?
A. Right there on the desk.
Q. May we have it for cross examination?
A. I don't think you will want it.
Q. Did you inject that for the jury's benefit? You don't want to prejudice this lady, do you?
A. No, I don't; I am sorry.
Q. About what I want or might not want?
A. I beg your pardon. I will apologize to the jury and the Court.
Q. Well, I apologize to you if I said anything I shouldn't. I am sorry.
Now, Mr. Pinkston, wasn't there another statement taken, too?
A. I don't recall another one. Mr. Larson may have taken another one but I didn't take any others.
Q. These two statements was your connection with the taking of statements of Mary Kathryn Smith?
A. Yes, sir.

Q. Did you hear Mr. Adkins testify about the switching of the license plates?

A. Yes.

Q. Is that a law violation?

A. It is a misdemeanor.

Q. Was any case filed on Mr. Adkins for that, to your knowledge?

A. Not to my knowledge, no, sir.

Q. Now, I want to ask you about three more questions about this matter. Did you have any recording device going on while you wrote these things down?

A. No, sir.

Q. How did you put them in sequence? Did you make some notes and take it and rewrite it? Or how did you do it?

A. I talked to her for approximately ten to fifteen minutes, then I started writing the statement, and I conferred with her as I wrote it and checked on various items in it. I compiled it and wrote it then handed it to her to be read. She made corrections in it.

Q. But she wouldn't sign it?

A. That is correct.

Q. And she made corrections in it?

A. Yes.

Q. Didn't the 1956 Dodge that was recovered have Arkansas plates on it?

A. No.

Q. What kind of plates did it have?

A. No plates.

Q. And you recovered that from Mr. Roberts?

A. The Dodge?

Q. Yes.

A. Yes, sir.

Q. Did you recover those Arkansas license plates?

A. Recovered a license plate issued by the State of Arkansas which was in Mr. Roberts' apartment.

Q. Wasn't this one of the plates that came all the way from Arkansas on that car?

A. I think not.

Q. Don't your records show, from Mr. Steiner, who was in Court yesterday, that it was one of the plates from Arkansas?

A. It was not.

Q. What plates were on that car in Arkansas? Do you know the number?

A. No. But it was not an Arkansas plate.

Q. What state was it?

A. I don't recall. I believe it was Kansas but I am not sure.

Q. You never did see the original papers yourself?

A. No, sir. Mr. Larson may have that information; I don't.

Q. Mrs. Smith was arrested on suspicion of car theft, too, wasn't she?

A. I don't know.

Q. At the time, on the 20th, when you talked to her in jail, the 20th of December, or the 19th—when was she arrested?

A. Not to my knowledge.

Q. Wasn't your office contacted by the Wichita Falls Office about a felony theft complaint against this woman?

A. Wichita Falls?

Q. I mean Wichita, Kansas.

A. Not that I know of.

Q. Was she jailed and booked for investigation of automobile theft when you went down there and took the statement from her for two or three hours? Was she or not?

A. I didn't examine the arrest card. On the previous evening I called the sheriff, Mr. Decker, and told him I had a warrant for her and it was possible she would show up at the county jail to visit her husband and if she did I

wanted Mr. Decker to arrest her and hold her on a warrant for the United States Marshal.

I was called later that night and told she had showed up and was in custody and was being held for the United States Marshal and for me.

Q. You know, don't you, you had plenty of time to find out where that Arkansas license plate came from?

A. Yes.

Q. You do have FBI officers in Arkansas?

A. Yes.

Q. And you don't know where they came from?

A. Mr. Roberts told me where it came from.

Q. Was it a Kansas plate?

A. I don't know.

Q. Now, she was arrested because she voluntarily went down to the jail to see her husband after he had been arrested on this federal charge?

A. Yes, sir, I assume she went there voluntarily, I had nothing to do with it.

Q. She wasn't going under any alias at the jail; her husband was booked as Vernon Smith, wasn't he?

A. Well—

Q. If you know. Do you know?

A. I can tell you what they told me at the jail.

Q. I am not asking you that. Did you catch her at the jail when she went to visit her husband?

A. Mr. Decker did.

Q. You wrote the statement down the next day?

A. The first thing the following morning.

Q. If this was everything she said why did you want her to sign it?

A. It is customary to have statements signed.

Q. A statement would have to be signed, in your opinion, as an officer?

A. It is a little more acceptable signed, yes, sir.

Q. It is better evidence signed?

A. I think so, yes, sir.

Q. It couldn't be she wouldn't sign it because the facts were not put down the way she contended?

A. I can tell you why she refused to sign it.

Q. But, she voluntarily told you these things?

A. Yes.

Q. Why didn't you ask her if she knew these cars were stolen on September 20th?

A. I think that is in there.

Q. That she knew it that day?

A. Yes, sir.

Q. Where is it in here? I don't believe you specified any date in there, did you, that she knew it?

A. Shall I read it?

Q. Point it out to me, I would like to see if I am wrong about it.

A. Right there.

Q. Now, did you question Brinkley after he was arrested and charged?

A. Yes, sir.

Q. And did you question Smith?

A. Yes, sir.

Q. You didn't charge this woman that was up there in Kansas with these two men with transporting these two cars down here?

A. Mrs. Smith, you mean?

Q. Yes.

A. No.

Q. Did Brinkley and Smith actually sell these two automobiles?

A. Not to my knowledge.

Q. Didn't they tell you they did? How could they have gotten part of the money if they didn't? You told us that a moment ago, that they got part of the money.

Mr. Hamilton:

I believe he is asking for a hearsay answer from the witness. I would like permission to go into that hearsay, if it is.

The Court:

I believe the witness has already testified that he at no time obtained any evidence as to who did get the money. I think the question is going over what we have already covered.

Mr. Tessmer:

I will withdraw it.

(By Mr. Tessmer):

Q. So far as you know they didn't have anything to do with selling these two cars, the men that brought them down here, is that right?

A. No, sir.

Mr. Tessmer:

That is all.

Re-Direct Examination.

(By Mr. Hamilton):

Q. Mr. Pinkston, he asked you about what the woman knew about these cars being stolen and when. You do know she told you that the three, she and her husband and Paul Brinkley, had obtained—or rather, that Paul and her husband had obtained—discarded out of state license plates in Kansas?

A. Yes.

Q. And that they had those plates and the luggage for the three of them in her Pontiac car?

A. Yes.

Q. That they were preparing to come to Dallas and that she drove them to the Robinson Buick Company?

A. Yes.

Q. And that Paul and her husband then shortly thereafter joined her with two brand new 1956 cars, a Buick and a Dodge, and they came to Dallas and Paul informed her when they arrived in Dallas that those cars were stolen?

A. With the exception, I don't believe the cars were brand new.

Q. 1956 cars, I will put it that way.

A. Yes, sir.

Q. Counsel asked you if you had taken another statement in addition to the one you have told the jury about on the day you interviewed the defendant down here and you said you did?

A. Yes.

Q. That other statement had reference to some other matter other than this?

Mr. Tessmer:

I object to that, the question shows on the face of it that it is irrelevant and immaterial, and it is not asked in the proper performance of the government attorney to go into something like that that he knows is not admissible.

Mr. Hamilton:

I just intend to show by this witness that it has no bearing on this matter.

Mr. Tessmer:

Then, why ask the question?

The Court:

Now, if the other fellow is asking questions that is not becoming to the United States Attorney and he says he doesn't intend to go into the other matter—what is the other matter?

Mr. Hamilton:

Defense counsel brought out on cross examination that Mr. Pinkston had taken an additional statement from this woman on that same date, which we didn't bring out, and then defense counsel went further with it, leaving the implication that something else may have been said.

I just asked this witness if this other statement he said he did take that day had any bearing on this matter before the Court this morning.

The Court:

Well, the statement would be the better evidence of the contents, but if it had any reference to it he can testify to it.

A. It had no reference to this matter that is on trial.

Mr. Tessmer:

We except, on the ground it is an attempt to cast an inference against this woman, that she gave another statement to this agent about something else that is not before the Court.

Mr. Hamilton:

The inference had already been brought out by the defense counsel.

The Court:

Since the matter has already been before the Court it is proper to show that the matter has no connection with the case. I will permit it.

Mr. Tessmer:
Note our exception.

(By Mr. Hamilton):
Q. Now, Mr. Pinkston, this fellow Roberts Mr. Tessmer brought out awhile ago has been filed on, do you recall when that was? I think the instrument shows.
A. I believe it is the 18th of December.
Q. And you had found one of these automobiles in Mr. Roberts' possession?
A. Yes.
Q. And he was charged with receiving that automobile, wasn't he?
A. Receiving and concealing it, yes.
Q. Do you know whether he has been indicted since that time?
A. I know, yes, sir.
Q. Well, has he or not?
A. He has not.
Q. And the witness Adkins has not been filed on as of now?
A. That is correct.
Q. Now, have you completed your investigation into that phase of this case?
A. I have not, sir.

Mr. Hamilton:
That is all.

Re-Cross Examination.

(By Mr. Tessmer):
Q. You had not completed using Mr. Adkins as a witness?
A. I am not using him as a witness.

Q. You interviewed him?
A. Yes, sir.

The Court:
He would have a right to go to the jail and get a witness.

Mr. Tessmer:
That is true.

(By Mr. Tessmer):
Q. At any rate, you recovered a stolen automobile from him just like you did from Mr. Roberts?
A. I recovered two from Mr. Roberts.
Q. You recovered one from Mr. Adkins?
A. Yes, sir.
Q. And you knew he had the other one?
A. I found it out later.
Q. You knew that. You knew that the defendant, Mary Kathryn Smith, gave Mr. Larson another statement?
A. I don't know.
Q. Is he here in Court?
A. He is out in the hall.
Q. Is he under subpoena?
A. I think he is.

Mr. Hamilton:
He will be here; he is the next witness.

WARREN A. LARSON, being first duly sworn, examined in chief by Mr. Hamilton. testified as follows:

Q. Mr. Larson, you have been sworn, haven't you?
A. Yes, sir.
Q. State yor name and occupation?
A. Special Agent for the FBI in Dallas.
Q. How long have you been a Special Agent of the FBI?
A. Five years in March.
Q. You have been stationed here how long?
A. Three years in February.
Q. Mr. Larson, did you have occasion to investigate the case that is now on trial, United States of America versus Mary Kathryn Smith?
A. Yes, sir.
Q. Did you investigate it jointly with Mr. Pinkston?
A. Yes.
Q. Mr. Larson, was a complaint filed against Mary Kathryn Smith in this case?
A. Yes, sir.

Mr. Tessmer:
That is repetition, the other agent has gone through that, the same facts Mr. Pinkston testified to.

The Court:
I think it is permissible to prove the same facts by two witnesses.

(By Mr. Hamilton):
Q. When was that complaint filed?
A. I believe it was on the 19th of December.
Q. Did you have occasion thereafter to see her?
A. Yes, sir.

Q. When was that?
A. The following day.
Q. Where did you see her?
A. In the Dallas County Jail.
Q. Had she been arrested?
A. Yes, sir.
Q. Now, Mr. Larson, did you have a conversation with her that day?
A. Yes, sir, I did.
Q. Who else was present?
A. Mr. Pinkston and Detective Shumate of the Dallas Police Department.
Q. Did you identify yourself to her?
A. Yes.
Q. Did you tell her you were with the FBI?
A. I identified myself then and she also knew me as being with the FBI because I had talked to her several times before.
Q. Did you tell her anything she said could be used against her in a Court at law?
A. Definitely.
Q. Did you make any threats to her?
A. No, sir.
Q. Any promises?
A. No.
Q. Did she make a statement to you?
A. She made a statement, yes, sir.
Q. After you had warned her?
A. Yes.
Q. As I asked you?
A. Yes.
Q. And was that statement, was it or not reduced to writing in her presence?
A. It was reduced to writing in her presence.
Q. Who reduced it to writing?

A. Mr. Pinkston.

Q. Were you present and heard her make the statement?

A. Yes.

Q. In substance, what did she say?

A. That she had been in Kansas—

Q. Don't mention any extraneous offense that she might have indicated.

Mr. Tessmer:

I object to that, that is telling the witness not to mention something, that is an attempt to prove an extraneous matter that does not involve moral turpitude.

The Court:

Give me your objection.

Mr. Tessmer:

He is trying to prove from this witness what she told him, and not to tell anything she said about any other trouble she was in. That is just the same as proving the offense.

The Court:

I think the District Attorney perhaps was warning the witness not to go into other fields that might produce something that was inadmissible here. I will let him answer.

Mr. Tessmer:

We except.

A. Repeat the question, please.

(By Mr. Hamilton):

Q. Give us the substance of what she told you in Mr. Pinkston's presence that morning?

A. She informed us that she had been in Wichita with her husband and Paul Brinkley and that they had gone to a cafe across the street from the Ben Robinson Buick Company in her car, she said, they had their luggage there in the car, had some extra license plates in the car, that she let Paul and her husband out of the car across the street from Ben Robinson Buick Company, or in that vicinity, and that she later met them on down the road, that Brinkley was driving a 1956 Buick, in question, and that her husband was driving the 1956 Dodge. She stated that the license plates had been changed on the cars and that they drove in company to Dallas, Texas.

After arrival at Dallas, Texas she made arrangements to contact Mr. Cecil Adkins, whom she had previously known and had contacted several weeks before. She contacted him relative to the purchase of two automobiles. And that Mr. Adkins told her to deliver the cars to the El Sombrero, which is a motel here, and that Paul and her husband drove the two cars to the El Sombrero and that she stayed there. Shortly thereafter Mr. Adkins appeared at the motel. They haggled over the purchase price of the automobiles, and that she finally accepted the $1,000.00, and that $1,000.00 was left in her care in the room where she was, and that Cecil drove off in the Buick. She didn't see the Dodge go. And that Cecil also took the license plate off of the Buick before he took it.

Q. Do you recall whether she said whether or not she knew the cars were stolen?

A. Yes, sir.

Mr. Tessmer:

We object to that. It is leading and suggesting.

The Court:

Overrule the objection.

A. She stated upon arrival in Dallas, which was approximately the 20th of September, Paul Brinkley told her the cars were stolen.

(By Mr. Hamilton):

Q. You say Mr. Pinkston was writing as she was talking, is that correct?

A. Yes.

Q. When she got through talking about this thing did he show her what he had been writing?

A. Definitely.

Q. And did he read it to her?

A. He allowed her to read it.

Q. Do you recall whether it was read to her?

A. I don't recall.

Q. Did she say it was true and correct?

A. Definitely. I asked her, specifically, having had prior business with her, if this statement was true and correct, and she said it was.

Q. And that is the same statement that was written down as to what you have just told the jury, is that right?

A. That is correct.

Q. The substance of it was the same as you have related to the jury?

A. Yes, sir.

Mr. Hamilton:

That is all.

Cross Examination.

(By Mr. Tessmer):

Q. Didn't she tell you that Paul didn't tell her the cars were stolen until some time after the sale?

A. No.

Q. Wasn't she up to see you again?

A. She changed her story several weeks ago, yes, sir.

Q. Several weeks ago?

A. Yes, sir; after she had been filed on and made bond.

Q. Did you write all that down?

A. About the changed story?

Q. Yes.

A. No.

Q. Why didn't you write that down, too?

A. I have no explanation for that.

Q. No explanation?

A. No, sir.

Mr. Tessmer:

That is all.

Mr. Hamilton:

The government rests.

(Short recess.)

Mr. Tessmer:

I offer in evidence Defendant's Exhibits 4 to 7, inclusive. At this time I offer in evidence Defendant's Exhibits 5 and 7, the same being the indictments, we offer Count One of each indictment before the jury at this time.

(Said instruments marked Defendant's Exhibits Numbers 4, 5, 6 and 7.)

(Mr. Tessmer read Defendant's Exhibits Numbers 4, 5, 6, 7, which instruments are as follows:)

(DEFENDANT'S EXHIBIT NUMBER 4.)

United States District Court for the Northern District of Texas, Dallas Division.

United States of America,

vs. No. 15,122 Criminal.

Paul Brinkley.

Judgment and Commitment.

On this 14th day of January, 1957 came the attorney for the government and the defendant appeared in person and without counsel, having in open Court waived counsel.

It Is Adjudged that the defendant has been convicted upon his plea of guilty of the offenses of transporting and causing to be transported in interstate commerce three certain stolen motor vehicles, at said time then and there well knowing same to have been stolen, in violation of Title 18, Section 2312, U.S.C., as charged in Counts I, II and III, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(S.) T. WHITFIELD DAVIDSON,
United States District Judge.

The Court recommends commitment to:

(Signed)..... (By).....
Clerk (Deputy Clerk)

(DEFENDANT'S EXHIBIT NUMBER 5:)

No.....

United States District Court, Northern District of Texas, Amarillo Division.

The United States of America,

vs.

Paul Brinkley.

Indictment.

Three Counts—18 U.S.C., 2312—

Interstate transportation of stolen automobile.

A true bill, (signature illegible), Foreman.

Filed 8th day of January,
1957 at 4:45 o'clock P.M.
JOHN A. LOWTHER, Clerk.
By Eleanor Bloheen, Deputy.
Filed Jan. 9, 1957,
19.... at 4 o'clock P.M.
JOHN A. LOWTHER, Clerk.
By Elizabeth McClellan, Deputy.

In the United States District Court for the Northern District of Texas, Aamarillo Division.

United States of America,

vs. No. 15122 Criminal.

Paul Brinkley. (18 U.S.C. 2312)

The Grand Jury Charges:

That heretofore, to wit, on or about September 18, 1956, Paul Brinkley, hereinafter called defendant, did unlawfully transport and cause to be transported in interstate commerce a stolen motor vehicle, to wit, a 1956 Buick automobile, motor number 15398776, from Wichita, Kansas to Dallas County, Texas, within the Northern District of Texas and within the jurisdiction of this Court; and at the time the said defendant so transported and caused to be transported said motor vehicle, he then and there knew it to have been stolen.

Count II.

The Grand Jury Further Charges:

That heretofore, to wit, on or about October 29, 1956, Paul Brinkley, hereinafter called defendant, did unlawfully transport and cause to be transported in interstate commerce a stolen motor vehicle, to wit a 1956 Oldsmobile 88 Holiday automobile, motor number V1209552, from Wichita, Kansas, to Dallas County, Texas, within the Northern District of Texas and within the jurisdict[illegible] this Court; and at the time the said defendant so trans-

ported and caused to be transported said motor vehicle, he then and there knew it to have been stolen.

Count III.

The Grand Jury Further Charges:

That heretofore, to wit, on or about November 28, 1956, Paul Brinkley, hereinafter called defendant, did unlawfully transport and cause to be transported in interstate commerce a stolen motor vehicle, to wit, a 1956 Mercury Montclair automobile, motor number 56SL84594M, from Wichita, Kansas, to Dallas County, Texas, within the Northern District of Texas and within the jurisdiction of this Court; and at the time the said defendant so transported and caused to be transported said motor vehicle, he then and there knew it to have been stolen.

A True Bill,
(Signature illegible),
Foreman.

(S.) HEARD L. FLOORE,
(Heard L. Floore),
United States Attorney.

(S.) WILLIAM N. HAMILTON,
Assistant United States Attorney.

(DEFENDANT'S EXHIBIT NUMBER 6:)

United States District Court for the Northern District of Texas, Dallas Division.

United States of America,

vs. No. 15,139 Criminal.

Vernon Harold Smith.

Judgment and Commitment.

On this 14th day of January, 1957 came the attorney for the government and the defendant appeared in person and without counsel, having in open Court waived counsel.

It Is Adjudged that the defendant has been convicted upon his plea of guilty of the offenses of unlawfully transporting and causing to be transported in interstate two certain stolen motor vehicles, in violation of Title 18, Section 2312, U.S.C., as charged in Counts I and II, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(S.) T. WHITFIELD DAVIDSON,
United States District Judge.

The Court recommends commitment to:

(Signed)..... (By).....
Clerk Deputy Clerk

(DEFENDANT'S EXHIBIT NUMBER 7:)

United States District Court, Northern District of Texas,
Amarillo Division.

The United States of America,

vs. No.....

Vernon Harold Smith,

Indictment.

Two Counts charging violation of 18 U.S.C. 2312.

A true bill, (Signature illegible) Foreman.

Filed 8th day of January 1957, at 4:45 o'clock P.M.
JOHN A. LOWTHER, Clerk.
By (S.) ELEANOR BLOHEEN,
Deputy.

Filed Jan. 9—1957, at 4 o'clock P.M.

JOHN A. LOWTHER,
Clerk.
By ELIZABETH McCLELLAN,
Deputy.

In the United States District Court for the Northern District of Texas, Amarillo Division.

United States of America,

vs.

Vernon Harold Smith.

No. 15139 Criminal (18 U.S.C. 2312).

The Grand Jury Charges:

That heretofore, to wit, on or about September 19, 1956, Vernon Harold Smith, hereinafter called defendant, did unlawfully transport and cause to be transported in interstate commerce a stolen motor vehicle, to wit, a 1956 Dodge Royal Sedan automobile, motor number D63354173, from Wichita, Kansas, to Dallas County, Texas, within the Northern District of Texas, and within the jurisdiction of this Court; and at the time the said defendant so transported and caused to be transported said motor vehicle, he then and there knew it to have been stolen.

Count II.

The Grand Jury further charges:

That heretofore, to wit, on or about November 28, 1956, Vernon Harold Smith, hereinafter called defendant, did unlawfully transport and cause to be transported in interstate commerce a stolen motor vehicle, to wit, a 1956 Oldsmobile 4-door sedan, motor number V 1136170, from Wichita, Kansas to Dallas County, Texas, within the Northern District of Texas and within the jurisdiction of

this Court; and at the time the said defendant so transported and caused to be transported said motor vehicle, he then and there knew it to have been stolen.

A True Bill, (Signature Illegible) Foreman.

(S.) HEARD L. FLOORE,
(Heard L. Floore),
United States Attorney.

(S.) WILLIAM N. HAMILTON,
Assistant United States Attorney.

The Court:
These are the judgments growing out of the two indictments read?

Mr. Tessmer:
Yes.

The Court:
I haven't signed them but I will state for your information I will.

Mr. Tessmer:
Thank you, Your Honor.

Mr. Hamilton:
No objection.

Mr. Tessmer:
The defendant calls Mary Kathryn Smith as the first witness in her behalf.

MARY KATHRYN SMITH, being first duly sworn, examined in chief by Mr. Tessmer, testified as follows:

Q. Please speak out so the jury and the Court can hear you.

What is your name?

A. Mary Kathryn Smith.

Q. Where is your home?

A. Wichita, Kansas.

Q. Do you know Vernon Harold Smith?

A. That is my husband.

Q. How long have you been married to him?

A. About eleven years.

Q. Where did you make your home?

A. Wichita, Kansas.

Q. What was the nature of your husband's business?

A. Well, he had been in the whiskey business.

Q. Where was he in this business?

A. Mostly in Missouri and Oklahoma.

Q. Now, at the time you are charged in the indictment with stealing a 1956 Buick and a 1956 Dodge, where did you make your home then?

A. Wichita, Kansas.

Q. You heard the testimony here yesterday of the witnesses, did you not?

A. Yes, sir.

Q. Is it true that you were in Wichita, Kansas on the date testified to by the officers?

A. Yes, sir, I was.

Q. Tell the jury the circumstances, how it came about, and what happened up there?

A. I was in Wichita on that day. I was at Paul Brinkley's house with my husband and Mr. Brinkley's wife and I went shopping and when we came back from shopping—

Q. Speak out louder. What happened?

A. I had gone shopping with Mrs. Brinkley and when I came back my husband and Mr. Brinkley mentioned they were going into some kind of car business, driving cars for forty dollars a car.

Q. Where?

A. From Wichita to Dallas; and they said they would be other cars for a dealer.

Q. What kind of a car did you have at that time?

A. A 1955 Pontiac.

Q. Was that a stolen automobile?

A. No.

Q. Where was your Pontiac at the time of the conversation?

A. In front of Mr. Brinkley's house.

Q. Are those the men tried in this case, in this Court?

A. Yes.

Q. What happened after that conversation?

A. They mentioned they would make forty dollars a car, average price, from one dealer to another dealer; didn't say we would leave town at that moment, but that evening we went to a place for dinner, and Paul got up and went and talked to somebody, he said a car dealer, when he got back he said we would leave town for Dallas that night.

Q. What did you do then?

A. I went to Mrs. Brinkley's house and picked up my suitcase and Mr. Steiner, and from there to the cafe, and had a cup of coffee with the two men, my husband and Mr. Brinkley. After we left there they told us to go on down the highway. I didn't see my husband or Mr. Brinkley, either one, until between Perry, Oklahoma and Oklahoma City.

Q. What did you drive?

A. My Pontiac.

Q. Down the highway?

A. Yes.

Q. At this time had you seen Mr. Brinkley or Mr. Smith with a car?

A. I did as we were getting close to Oklahoma City.

Q. Had you seen any license plates changed at that time?

A. No, sir, I didn't; the tags they had on their cars was already on them, and I didn't see them change the tags.

Q. Where were you to meet Mr. Paul Brinkley and your husband in Dallas?

A. Well, they told me to check into the Skyline Hotel, for Bob and I, Paul's wife, if we got to Dallas before they did; and we saw them a little ways down the road, and then would see them off a little ways.

Q. What kind of cars were they driving?

A. Paul driving the Buick and Harold the Dodge.

Q. Where did they get those cars?

A. From a dealer, they said. They didn't say what dealer, but they were driving them to a dealer in Dallas, Texas.

Q. What date was that you started out from Wichita?

A. On the 19th.

Q. Of what month?

A. September.

Q. What month?

A. September 18th or 19th; the 17th was my birthday, I remember that.

Q. How was your luggage hauled?

A. I had my suitcase and Bob's suitcase in my car; and Paul's in my car; and my husband's was in my suitcase.

Q. Had you gone through Brinkley's suitcase?

A. No.

Q. Did you know anything about a suitcase full of stolen license plates?

A. No.

Q. What time did you arrive in Dallas?

A. Between 9:00 and 10:00 that morning.

Q. Where did you go to?

A. To the Skyline Motel.

Q. Who checked in with you?

A. My husband.

Q. Who else?

A. Mr. and Mrs. Brinkley.

Q. Now after you checked in the motel what was the next thing that happened to your in this case?

A. Well, we slept until—close to noon. Then Paul came over and woke me up and asked me to make a telephone call, he wanted to know if I would introduce him to Mr. Adkins.

I said, "I will call and ask if Mr. Adkins is at his store."

Paul said he could make a commission if he sold the cars for the dealer.

Q. Did you telephone Mr. Adkins?

A. Yes.

Q. What did you say?

A. That I phoned for Mr. Brinkley, and he talked to Mr. Adkins on the phone.

Q. What day was that?

A. On the 19th, I would say, we left town on the 18th.

Q. Was that the same Mr. Adkins who testified in Court yesterday?

A. Yes.

Q. As a result of that conversation what happened?

A. Mr. Brinkley told me that Adkins was not in and he wanted to make some phone calls and check some people and the chances are he would be able to make a good commission on the cars with the dealer.

Q. What were you asked to do?

A. Later on that day he told me that he and Mr. Adkins had got together on their telephone call and that Mr. Adkins asked him to bring the two cars to the El Sombrero and park them.

Q. Had you ever registered in the El Sombrero at that time?

A. No.

Q. You hadn't been there?

A. I didn't even know where it was.

Q. Where was it?

A. About a half a block from the motel I was staying in.

Q. You were in the Skyline?

A. Yes, sir, with my husband.

Q. Where were you to go? Where were these cars taken?

Mr. Hamilton:

If the Court please, he is asking her one question right after the other that calls for hearsay.

Mr. Tessmer:

I believe—

The Court:

I will permit the testimony. The defendant is being called upon to trace the cars. If it comes to the place where the question itself suggests the answer, avoid that.

Mr. Tessmer:

Yes, Your Honor.

(By Mr. Tessmer):

Q. Now, Mrs. Smith, who asked you to go to the El Sombrero?

A. Mr. Brinkley.

Q. How did you go over there?

A. Well, I walked across the street, I was going to take my car and come back later on, so, I walked to the El Sombrero—I didn't go to the El Sombrero until the next day after this conversation on the phone.

Q. What date did you go to the El Sombrero?

A. It would have been the 20th.

Q. What time of day did you go there?

A. About 11:00 o'clock in the morning.

Q. What cabin did you go to?

A. Number 26.

Q. What are the facts as to whether or not in Cabin 26 you saw Cecil Adkins?

A. He wasn't there when I arrived—a friend of his had the cabin rented, and his name was Mr. Ramsey.

Q. Then this was the 20th of September, 1956?

A. Yes.

Q. When you got there what happened about these cars?

A. Mr. Ramsey got on the telephone, he didn't seem to know what I was there for. I told him I was sent over there by Mr. Brinkley, so, he used the telephone and called Cecil Adkins to come there. I said that I had been sent there by M. Brinkley to collect some money for him.

Q. How much money were you supposed to collect?

A. $1500.00.

Q. For what?

A. He said two automobiles, and it was supposed to be sort of like a down payment or something.

Q. Do you know what the full transaction between Mr. Adkins and Mr. Brinkley was?

A. No. All I know is that he said $1500.00.

Q. How much money did you get?

A. Mr. Adkins, when he arrived, had a bookkeeper to go for a check, cash it, I told him $1500.00, so Mr. Brinkley sent me off, and when his bookkeeper came back, he

cashed a check for $1,000.00, I laid the $1,000.00 on the dresser and told him Mr. Brinkley told me to pick up $1500.00.

Q. What did you do?

A. I called Mr. Brinkley to come and settle his own business transaction.

Q. Then what happened?

A. About five or ten minutes later, Mr. Adkins seemed very nervous, he didn't want to meet Mr. Brinkley, he didn't want to meet any person, so, he left in the Buick.

Q. You heard his evidence here yesterday about your switching license plates. Tell us what happened about that?

A. Well, there was nothing even said about license plates that I know of; I couldn't tell you for sure, I know there was an Arkansas tag, but I don't know what the other tag was on the other car.

Q. This $1,000.00 that was left in the cabin—had you rented the cabin?

A. No, sir, I had never checked into the El Sombrero Motel.

Q. What are the facts as to whether you got the money?

A. I got no part of it. When Mr. Brinkley got there he picked up the $1,000.00. I wasn't going to take it because it was $500.00 short.

Q. He sent you for $1500.00?

A. Yes, sir.

Q. How long were you out there?

A. I was there, I imagine an hour and a half, because the bookkeeper had to go into town at the bank.

Q. This check that came into evidence, that was not made out to you or Brinkley?

A. No.

Q. Who was it made out to?

A. I heard you mention the name awhile ago, but I never heard that name before.

Q. Never before?

A. No, sir.

Q. Do you know how and where those two automobiles were acquired by Mr. Brinkley and your husband?

A. No, sir, I knew nothing about how they got them, except what they told me, they got them from another dealer.

Q. When did you learn the cars were stolen?

A. The night before I was arrested.

Q. How did you find out about that?

A. Mr. Brinkley had been drinking a little bit and I heard a conversation that didn't sound just right so, I asked him about it, and my husband didn't tell me until the next day.

Q. What date?

A. I don't remember the date.

Q. Where did your husband tell you about it?

A. At the Tower Motel.

Q. This transaction had occurred months before, hadn't it?

A. September. I was arrested in December.

Q. After you were arrested when did you first talk to Mr. Pinkston?

A. It was after I had been rearrested.

Q. Were you arrested one time and then released?

A. Yes.

Q. What date were you arrested and released?

A. Yes, sir, I was, and they dropped the charges.

Q. How long afterward was that when you were finally arrested again?

A. I would say about four days. I went down to take some personal belongings to my husband, a toothbrush and things like that, and they said Mr. Decker would like to speak to me.

When I was called in there Mr. Decker was not there; I was put under arrest again.

Q. How did you register to visit your husband after he was charged with stealing a car?

A. Mrs. Harold Smith.

Q. Did you sign your name?

A. They never did ask me to sign my name.

Q. Did you tell them?

A. Yes, sir, I told them.

Q. You hadn't left town, or anything, up to that time, had you?

A. No, sir, I had never left town; in fact, I had rented a place to live, I was intending to stay in Dallas.

Q. After you got in jail visiting your husband down there, what happened to you in jail?

A. Well, I was booked on—I believe it was something about the FBI, to hold for the City of Dallas.

Q. Well, did you talk to anybody in jail?

A. No, they didn't let me make a phone call or anything.

Q. This was on the 19th?

A. Yes, sir.

Q. When did you first talk to Mr. Pinkston in the jail down there?

A. Well, it was after I had been rearrested, and I would say it was the next day.

Q. Up to that time had you been permitted to use the phone?

A. No. There was a message brought to me. I was asking for a bondsman.

Q. What did you want a bond for?

A. I don't know; they told me I was under arrest again, so, I wanted a bondsman.

Q. You wanted to get out of jail?

A. Yes.

Q. What time did Mr. Pinkston visit you in jail?

A. Just before lunch.

Q. Describe to the jury the place where you were questioned by Mr. Pinkston.

A. In the doctor's office of the county jail.

Q. Who was present?

A. Mr. Pinkston, Mr. Larson and Mr. Shumate.

Q. Who is Mr. Shumate?

A. He is with the City, I believe.

Q. A detective?

A. A detective or something like that.

Q. Did he have anything to do with your first arrest you were released on?

A. Yes.

Q. What did he have to do with that?

A. He wrote up the papers and everything.

Q. On the first arrest?

A. Yes, sir, he did most of the writing of the papers.

Q. Was he armed when he came up to talk to you?

A. I didn't notice.

Q. Who else was visiting—Mr. Pinkston, Mr. Shumate and Mr. Larson?

A. That is all—and myself.

Q. Tell the jury what happened, as you remember.

A. They asked me would I cooperate with them and tell them what I knew about Mr. Brinkley and Mr. Smith and I told them I would try to tell them what I knew, but I never did think anything like a stolen car, naturally, at that time I knew the cars were stolen but I didn't know the cars were stolen when they were taken, when we left Wichita.

Q. Did you know they were stolen when you went to collect the $1500.00 that Mr. Adkins welshed on?

A. No, sir; I thought it was a down payment on the two cars between Paul and Brinkley and the salesman that he was supposed to be delivering them to.

Q. The statement you made when they questioned you—how long did they question you that day?

A. I think close to an hour.

Q. Did you have an attorney present?

A. I had never hired an attorney; I didn't think I needed anyone at that time.

Q. How did the word "stolen" get into this?

A. It was assumed they were stolen; they had already told me they were stolen.

Q. Everybody knew they were stolen when they talked to you?

A. Naturally, he wrote it down they were stolen cars, and I didn't know they were stolen cars, I didn't know any of them were stolen.

Q. Now, how did he write this statement down?

A. They would ask me a few questions and I tried to answer them the best I could and they would write down whatever I said; and whenever I read it over I wouldn't sign it because of the way it was worded.

Q. Why?

A. The way it was worded about cars having been stolen, I couldn't sign that because I didn't know they were stolen. It didn't read right, saying that the cars were stolen and asking me to sign something I knew they were stolen when I didn't know.

Q. Did you later have a conversation with Agent Larson?

A. Yes, sir, several conversations.

Q. Did you tell him what you knew about the cars later?

A. Yes, sir.

Q. What did you tell him with reference to what you knew about the cars being stolen?

A. I told him I didn't know the cars were stolen until the night before the arrest; that is what Mr. Brinkley told me, and my husband verified that the next day.

Q. Told you?

A. The next day is when I was arrested.

Q. Now, Mrs. Smith, did they want you to sign that statement they wrote up?

A. Yes, sir, they asked me to sign it.

Q. What did they say when you wouldn't sign it?

A. Well, nothing. I just said I couldn't sign it because it wasn't true.

Q. Because it wasn't your statement?

A. It wouldn't have been the way I would have worded it.

Q. You might have told them the cars were stolen, in jail, you knew they were?

A. I did then, I knew that, but I didn't know at the time that they filed charges on me, I didn't know the cars were stolen on the day they left Wichita.

Q. Did you take a trip anywhere last night?

A. No, sir.

Q. Did you go anywhere in the city last night?

A. I went out to a girl friend's of mine.

Q. Did you go anywhee else? Any motels?

A. No, sir.

Q. Did you make any phone calls to any motels last night?

A. No.

Q. Have you had occasion since your arrest and release to go out to the El Sombrero and check on Cabin 26?

A. Yes.

Q. When did you do that?

A. I wanted to find out the name of the man registered there.

Q. When did you do that?

A. Last night.

Q. Where did you go?

A. The El Sombrero.

Q. What cabin did you go to?

A. I went to the office and I asked who was registered in on that date.

Q. On what date?

A. The 19th, and checked out on the 20th.

Q. 19th and checked out on the 20th?

A. Yes, sir.

Q. What cabin?

A. Number 26.

Q. What place? The El Sombrero?

A. Yes.

Q. What are the facts as to whether that was the same cabin you picked up the money from Adkins?

A. Yes, sir, this was.

Q. Who was registered in that cabin?

A. The last name was Ramsey, I couldn't remember the name—I was introduced to him.

Q. When did you see that record?

A. Last night.

Q. Is it still out there?

A. Yes, sir, in the ledger, on September 19th, and checked out on the 20th.

Q. Who did you talk to about it last night? Do you remember the name?

A. No, sir; it was a lady.

Q. Describe her for the benefit of the government.

A. She was tall, about 45 years old, gray hair.

The Court:

Counsel, unless you are anticipating something that is not before the Court I don't know how anything that happened last night would become material.

Mr. Tessmer:

The government witness, Mr. Adkins, testified this woman was registered at the El Sombrero when he went

out there and picked up these automobiles. We are making proof now about that, which cabin she registered in that day.

Mr. Hamilton:
I believe the record would be the best evidence.

The Court:
Well, you may continue the examination.

(By Mr. Tessmer):
Q. Now, Mrs. Smith, is there anything else you want to tell the jury? These agents didn't take unfair advantage of you at all, did they?
A. No, sir.
Q. They were nice to you?
A. Very nice.
Q. But it was a mistake about this stolen business?
A. Yes, sir, that is right.
Q. And that is why you wouldn't sign it?
A. I admitted I knew my husband and Mr. Brinkley were driving the cars from one dealer to another one, but I didn't know they were stolen, and I didn't admit it then.
Q. The grand jury charged you, on the 20th of September, 1956, in Dallas County, Texas, that you stole and disposed of these automobiles to Mr. Adkins, giving the motor number, to-wit, a 1956 Buick sedan, which said vehicle was moving in interstate commerce from Wichita, Kansas to Dallas, Texas, and knowing that said motor vehicle was then and there stolen; would you tell the jury whether or not you are guilty of that charge?
A. I am not guilty of that charge because I didn't know the cars were stolen.
Q. And the second paragraph charges you with the same offense with reference to the 1956 Dodge, that the cars were stolen; is that true, that they were stolen?

A. Yes, sir, they were stolen, but I didn't know it at the time.

Q. Is it true they were stolen from Wichita, Kansas?

A. I didn't know positive that they were really stolen from Wichita, Kansas; all I know is when I left Wichita my husband told me that is where they were driving two cars from.

Q. Did you know on December 20th that this 1956 Dodge was stolen when you picked up the money?

A. No, sir.

Q. Tell the jury whether or not you are guilty of selling those two cars with knowledge they were stolen?

A. On my oath, I didn't sell the car knowing it was stolen, I simply went to collect the money that I was asked to collect for Mr. Brinkley.

Q. Do you know why they asked you to collect the money?

A. Because Mr. Brinkley told me Mr. Adkins didn't want to meet any person. – Because he had an appointment & was busy

Mr. Hamilton:

She is testifying to hearsay, what Mr. Brinkley told her, or what somebody else told her.

Mr. Tessmer:

It has bearing on her intent, it is the only way we can arrive at it.

The Court:

Go ahead.

(By Mr. Tessmer):

Q. Is there anything else you want to tell the jury in your behalf before we rest our case?

A. Nothing except I didn't know the cars were stolen, and didn't understand completely why they were working

on a commission of forty dollars a car, or anything like that. I received no profits. Even the money I was sent to collect, I didn't pick the money up, and received no part of it.

Cross Examination.

(By Mr. Hamilton):

Q. Now, Mrs. Smith, you say you didn't tell the FBI that morning that those automobiles, that you knew they were stolen at the time, apparently you told them you found out about that later and that is how it got into the statement?

A. Evidently.

Q. There are a whole lot of other things you have told that don't jibe with this statement—for instance, why did you tell them that Paul and your husband had obtained a discarded out of state license plates and that you had those plates, or luggage for the three of you in your Pontiac car?

A. About the license tags?

Q. Yes.

A. I didn't know anything about how they got them; all I know is that the tags were on the car when I seen them at Oklahoma City.

Q. You said Paul and your husband obtained discarded sets of license plates, and we had these plates, and luggage for the three of us in the Pontiac car, as you were driving to Dallas.

A. The plates were in Mr. Brinkley's suitcase; I didn't know anything about the plates being in there, other than the fact what they told me.

Q. Where was Mr. Brinkley's suitcase?

A. In my car; but I didn't know he had the license plates in the car.

Mr. Tessmer:

We object to counsel laughing in the presence of the jury; that is improper.

(By Mr. Hamilton):

Q. You say you have no idea what dealer they got these automobiles from?

A. No, sir; all I know is that the cafe we went in to eat dinner was close to where they were going to talk to the dealer.

Q. Where were they going?

A. They said across the street; I don't know the name of the company.

Q. You say in your statement you drove them to a drive-in across the street from the Ben Robinson Buick Company?

A. That is right. But I didn't know the name of the company until they told me where the cars came from.

Q. Well, at any rate, you told them, apparently, that you drove them across the street from the Ben Robinson Buick?

A. I had read the newspaper and found out the cars were stolen from Ben Robinson, yes.

Q. When did you find that out?

A. When I was in jail.

Q. What date?

A. I don't remember.

Q. You don't remember?

A. No, sir; all I know, I was in jail five days, under investigation.

Q. Now, you say you drove them to the Ben Robinson Buick Company and let them out?

A. No, sir, I didn't; I drove them to Van's Drive-In.

Q. That is right; you drove them across the street from the car lot of Ben Robinson Buick Company and let them out?

A. No, sir; we went in and had dinner at the drive-in, then Brinkley and Mr. Smith left and said they would be back in a few minutes, they had to talk to a car dealer. When they came back that is the first I knew I was leaving town that night.

Q. That is the first you knew you were leaving town?

A. Yes.

Q. What was the luggage doing in your car?

A. It wasn't in my car then.

Q. I thought you said it was?

A. I said we went there and had dinner then went to Brinkley's apartment and picked up his wife's luggage, then I went to my house and picked up the suitcase. I was planning on leaving town, but I didn't know I was leaving with them, driving two other cars, I didn't know they were going to drive two other cars until I left the drive-in.

Q. What did you let them out at the drive-in for?

A. They said they were going to talk to a dealer. They did go and talk to somebody. When they came back they informed me that we were leaving town.

Q. Then you went and got the luggage?

A. Yes, sir. But this car lot you are referring to, I hadn't been in the car lot and didn't know who the dealer was—they didn't say.

Q. If they went over and got the two additional cars and you didn't know you were going to Dallas, how is it you had all of the luggage in your car?

A. They said we would leave town, and when I picked up my luggage and came back my husband and Mr. Brinkley came along again and told me they were leaving town—I knew we were leaving town, but I didn't know positively.

Q. I don't understand how you got their luggage in your car?

A. I had planned to leave town the next day anyway, but I didn't know we were going to leave that night. He said he thought we were—when he talked to the salesman he came back and said, "We are definitely leaving town." He said, "Harold and I have to drive a couple of cars for this dealer."

Q. You said you were definitely leaving town?

A. That was the second time.

Q. Did you have the luggage in your car at that time?

A. Yes, sir, because whether we left town or not we had planned to stay at their apartment until the next morning.

Q. You had all of their luggage in your car?

A. I had already planned to leave the next morning, whether they went or not.

Q. You had planned to go whether they went or not?

A. Yes.

Q. Why is it you said in that statement, "On or about September 18th in Wichita, Kansas, Brinkley and Vernon Smith and I were planning—making plans to go to Dallas"?

A. That is possibly what I referred to in the cafe.

Q. In your statement you say that Paul and your husband then joined you with Paul driving the Buick and your husband driving the Dodge, and that they changed the license plates on the Buick and Dodge. Why did you tell the FBI that?

A. Because I asked my husband about the tags on the car, I asked my husband about the foreign tags, I was expecting they were driving the cars for a dealer, to use dealer tags.

Q. You said they changed the license plates on the Buick?

A. They didn't change anything that I know of.

Q. Why did you say in the statement they changed the license plates?

A. That is what they told me.

Q. When did you see them?

A. I asked why there was no dealer tags on the car, and my husband said, "Because we changed them."

Q. When was that you asked him about that?

A. Somewhere down toward Oklahoma City, I don't remember, the first place we stopped to eat. I just happened to notice the tags on the car, I had never seen the cars and I didn't know what kind of cars they would be driving, except they told us to stop at this truck stop at Perry, Oklahoma.

Q. So, they stopped on the way down to Dallas and they had changed the tags?

A. They said they took the dealer tags off of the car at the car lot and put on other tags because the dealer wanted his tags.

Q. And because you had asked them why one of the cars had an Arkansas license on it and the other had something else?

A. Yes, sir.

Q. That was on the way to Dallas?

A. Yes.

Q. Why did you testify on direct examination you didn't know anything about any tags being changed?

A. I don't know, only what they told me, all I know is what they told me.

Q. You knew it on the way to Dallas, whether they told you or whether you saw them do it?

A. I didn't see them do anything about the tags, I just know what they told me and that is all.

Q. That was on the way to Dallas and that was a day or two before you sold to Mr. Adkins?

A. I just wondered if the car came from Arkansas, or what state they were from; out of curiosity I asked him.

Q. You were informed in Dallas by Paul that the Buick and Dodge were stolen cars and he wanted to sell them?

A. They worded that wrong; I didn't know the cars were stolen.

Q. I am not stating to you what the statement says. Tell me whether or not that is true.

A. I knew they wanted to sell the cars if they could, and they would make a commission, is what they told me.

Q. The statement, whether right or wrong, you say, "On arriving in Dallas Paul informed me that the Buick and Dodge were stolen cars and that he wanted to sell them."

A. I didn't make that statement. That is another reason I didn't sign it.

Q. They were sold within a day after that?

A. They were sold the next day, I believe, Mr. Brinkley told me him and Mr. Adkins had gotten together on the price.

Q. I am just asking you things you know about.

A. All I know is what they told me.

Q. Then you go on further and state that you called Mr. Cecil Adkins on the telephone and informed him that you had a man who wanted to talk to him about stolen cars?

A. No, sir.

Q. That you had a man who wanted to talk to him about some cars, that you had mentioned to him when you met him and had a date with him a week or two before, is that right?

A. Part of it is right and part is not. That is why I didn't sign the statement.

Q. What is right?

A. Mr. Brinkley asked me to call anybody I knew, and I only knew one person in this town, but I didn't think he would be interested in dealing in cars, and they said to call him and if he doesn't want to buy them he might know someone who did.

Q. The statement says, "I was acquainted with a man named Cecil R. Adkins who operates the Army Store on Maple Avenue near Inwood Road in Dallas, Texas. And I called him by phone and informed him that I had a man who wanted to talk to him about stolen cars that I had mentioned to him when I met him and had a date with him a week or two before."

Is that right?

A. That is not my wording, I didn't say I would call anybody about stolen cars.

Q. Let's leave the word "stolen" out.

"I was acquainted with a man named Cecil R. Adkins who operates an Army Store on Maple Avenue near Inwood Road in Dallas, Texas, and I called him by phone and informed him I had a man who wanted to talk to him about the cars that I had mentioned to him when I had met him and had a date with him a week or two before."

A. I had never mentioned that to him before, I talked to him on the phone.

Q. And you go on to say, "Adkins told me he didn't want to meet the fellow with the cars but he was interested in buying them."

A. That is correct.

Q. "Adkins asked me to have the cars taken to the El Sombrero Motel and to meet him at that motel."

A. No, sir; he asked Mr. Brinkley to do that, and Mr. Brinkley and my husband delivered the cars there; I just simply handed the phone to Mr. Brinkley and he did the talking.

Q. Why didn't you tell the FBI Mr. Brinkley had talked?

A. Because I was in a nervous condition there, I was sick, in that jail, I tried to tell them as much as I knew about it, but I never mentioned anything about stolen cars because I thought the cars were perfectly legitimate.

Q. You said you met Cecil Adkins at the El Sombrero and he examined the stolen Dodge and stolen Buick and offered me $1,000.00.

A. Mr. Brinkley sent me there to collect the money.

Q. "I told him that Paul wanted more money than that for the cars and that Paul would be right up to the El Sombrero."

Is that right?

A. That is not worded right there. I told the FBI that he asked me on the phone about the price on the cars and I said I didn't know anything about any cars, you will have to talk to Mr. Brinkley, and that is when he talked to Mr. Brinkley. I didn't quote any prices or anything else. Mr. Brinkley said $1500.00 as a down payment, that is what he told me.

Q. I am talking about when you met Cecil Adkins at the El Sombrero Motel.

A. Yes, sir.

Q. He offered you $1,000.00?

A. No, sir, he didn't offer me anything. I was sent to collect money for Mr. Brinkley, then he told me he would have to write a check. They had already agreed on $1500.00. Brinkley and Adkins had talked on the phone. All I did was to go to collect it for Mr. Brinkley.

Q. The statement said, "I told him Paul wanted more money than that for the cars and Paul would be right up to the El Sombrero."

A. Yes, sir, because I was sent there for $1500.00 and he only had $1,000.00.

Q. The FBI apparently got that from you?

A. I admit one thing, I know the amount of money I was sent to pick up.

Q. "I told Cecil to take the license plates off the stolen cars and leave them in the Cadillac that I was driving." Is that right?

A. That is not completely wrong, no, sir. There was nothing said about that, only what Paul told me. I was only repeating what I had been told to tell Mr. Adkins.

Q. Why did you take the tags off?

A. I didn't.

Q. They were taken off, weren't they?

A. I don't know.

Q. And put in your Cadillac?

A. I don't know anything about the tags being taken off at that time at all.

Q. "Cecil then drove the Buick away and a short time later I noticed that the Dodge was also gone." Is that right?

A. When I called Brinkley on the phone, the next I knew of it Mr. Adkins left. I didn't know for sure, but I think he left in the Buick, and by the time Paul got there the Dodge was gone.

Q. Well, then, that is right?

A. That part is right. I don't know exactly who drove what because I was waiting for Mr. Brinkley.

Q. Apparently you must have told him that much because they wrote that?

A. I told them that and Mr. Brinkley, about the money.

Q. Why didn't you mention that when you were making this statement about this fellow Ramsey?

A. Because I didn't think that it was important, all I know is what I said, I went to collect the money and Mr. Adkins says I was checked in at the motel, but I wasn't.

Q. Was Mr. Ramsey present?

A. Mr. Ramsey was in and out; I probably met him; he was in and out of the place. It was his cabin I found out last night.

Q. How many times was he in and out?

A. He was there when I got there, and after Mr. Adkins got there he was there a little while; they left to go and use a pay phone, and back again; then he left again on another telephone call.

Q. What does he look like?

A. All I remember, he is sort of a not too tall, medium build man, light brown hair.

Q. Do you know where he is now?

A. No, sir, I never seen the man before.

Q. Who told you Mr. Ramsey would be there?

A. Mr. Adkins told Mr. Brinkley and Mr. Brinkley told me to go over there to Number 26 where my husband and Mr. Brinkley had parked two cars.

Q. What cabin was that?

A. 26.

Q. Cabin 26?

A. Yes.

Q. Was Mr. Ramsey there when you arrived?

A. Yes, sir, he was.

Q. He was there when you arrived?

A. That was on the 20th, in the morning, and my husband and Mr. Brinkley had taken the cars to the El Sombrero the night before.

Q. When did Cecil Adkins supposedly ask Brinkley and your husband to have the cars delivered there?

A. On the telephone some time.

Q. When?

A. I think it was on the 19th.

Q. When did you leave Wichita, Kansas?

A. Must have been the 18th, because I believe I checked into the Skyline on the 19th.

Q. Would you think you checked in and then had the telephone call that night?

A. Well, it was early in the morning of the 19th that I checked in at the Skyline Motel, it was around noon when Mr. Brinkley asked me to call Mr. Adkins.

Q. Now, why, really, didn't you sign this statement? Why did you tell the FBI?

A. Because it is not worded right.

Q. Is that what you told the FBI?

A. I don't believe I gave them any particular reason; I read it and I said, "Part of it sounds like just like I told you, and it is the truth", but, the way they worded it about stolen cars and everything, it meant I had known the cars were stolen and I didn't know that.

Q. In other words, you told them their statement was wrong and you couldn't sign it for them?

A. That is right. It is just the way they worded it that is wrong.

Q. Didn't you tell them you didn't sign that statement because the attorney told you not to sign one?

A. No, sir; I didn't talk to the attorney.

Q. You talked to Mr. Street?

A. He is not the attorney.

Q. Or Mr. Weaver?

A. No, sir, not at that time I hadn't talked to him; all I talked to him about was if I needed an attorney; I didn't know how much trouble I was in and the details of it.

Q. You mean you hadn't employed an attorney?

A. No.

Q. But you had talked to one, hadn't you?

A. Yes, sir, I did have Mr. Street to help me make a bond.

Q. You told the FBI that their statement was wrong there that morning, at least, did you?

A. Wrong enough that I wouldn't sign it.

Re-Direct Examination.

(By Mr. Tessmer):

Q. Mary Kathryn, did you mention to the FBI agents that you had discussed with Mr. Weaver, a few days before, the fact that you had been arrested and got out, and that sort of thing, and you mentioned to them one reason you didn't sign it was because you didn't have a lawyer?

A. I may have, I don't remember particularly, but it was because—I hadn't worried too much about a lawyer because I didn't see why I needed one because I wasn't guilty of stealing any cars.

Q. They had warned you anything you said, signed or unsigned, was usable against you?

A. Yes, sir, anything I even said would be held against me.

Q. Whether they wrote it or not?

A. Yes, sir, whether I signed it or didn't sign it, they still said I would be held to anything mentioned.

Q. Had you discussed this matter with Mr. Brinkley, after your arrest?

A. No, sir, I hadn't talked—I had talked to Mr. Brinkley, if he wanted to make a bond, or if there was any help I could be to my husband in making the bond.

Q. You had read about this in the paper when you were arrested the first time?

A. Yes, sir, I read it in the paper.

Q. Had you read about these license plates being changed in the paper, the full story?

A. It seems to me it was in the paper; I don't remember definitely.

Q. Did the paper mention these cars to be stolen each time they mentioned them?

A. Yes.

Q. How many times in the statement they tried to get you to sign did it mention stolen automobiles?

A. Every one of them.

Q. Every time they used the word "automobile" they used the word "stolen" or "stolen automobile", didn't they?

A. Yes, sir.

Mr. Tessmer:

That is all.

Examination.

(By The Court):

Q. You three were at an eating place in Wichita?

A. The four of us.

Q. Before the visit to Dallas did you discuss the purpose of the visit and whom you were to visit?

A. Yes, sir, I wanted to come down here to see a girl friend of mine.

Q. Did you discuss the purpose of his visit?

A. No, sir; except I know Mr. Brinkley and my husband were talking about doing some kind of car deliveries for dealers, but they didn't mention they were coming to Dallas.

Q. Was anything said about you taking your car and they had one, to the effect they would need your car to come back in?

A. No, sir; because I really had planned to stay in Dallas.

Q. Were you coming to visit the girl in Dallas?

A. To visit Dallas, and possibly, if everything was all right, and I could get work here I was going to move to Dallas.

Q. As you came along the road did you see anything of Mr. Brinkley and your husband?

A. They said if they hadn't caught up with us just out of Perry, a truck stop, to stop and have a cup of coffee and wait a little bit.

Q. You did see them between Wichita and Dallas, Texas?

A. Yes, sir, along the way, that is what I noticed the tags on the cars, the foreign tags, but they didn't tell me.

Q. There was some evidence that you knew Mr. Adkins on a former occasion?

A. Yes.

Q. What was the occasion you knew him on?

A. On the occasion I had called him up because a friend of mine asked me to call him, just an acquaintance of his asked me to call him.

Q. You had been down here before?

A. Yes, sir, I had been down here twice before; I was going to my aunt's in Houston and I stopped.

The Court:
That is all.

Mr. Tessmer:
The defendant rests.

Mr. Hamilton:
The government closes.

Mr. Tessmer:
The defendant closes.

The Court:

It is now 12:00 o'clock. Are there any requested charges or instructions?

Mr. Tessmer:

I delivered some yesterday. I thought the Court had them last night.

The Court:

You might pass me, also, the two indictments that have been offered in evidence, and the indictment in this case.

The Court:

Gentlemen, I would like to have an argument made before lunch, but perhaps it would be better to have lunch and start a little earlier.

What are your wishes about the matter?

Mr. Hamilton:

I don't think it will take over ten minutes for the government.

Mr. Tessmer:

If that is enough for them we will go along with it; ten minutes is plenty.

The Court:

The case has been drawn out, but when it is boiled down there are not so many issues; I think fifteen minutes to the side would be enough.

We will start, instead of 1:30, we will start at 1:15.

So, Gentlemen of the Jury, don't talk to anybody about the case until you have had the charge of the Court and heard the argument of the attorneys, and then start talking about it.

The Court Crier will recess until 1:15.

COURT'S CHARGE.

The Court:

Gentlemen of the Jury, we will give you the charge. It will be largely an oral charge, so give attention, that you may remember its provisions.

In Cause Number 15,138 Criminal, styled United States of America versus Mary Kathryn Smith, the grand jury charges in two counts in this indictment, the first of which is that on or about the 20th of September, 1956, in Dallas County, Texas, within the Northern District of Texas, and within the jurisdiction of this Court, that Mary Kathryn Smith, hereinafter called the defendant, did barter, sell and dispose of, to Cecil Adkins, a certain stolen motor vehicle, to-wit, a 1956 Buick four door sedan, serial number 6V-4009679, which said stolen motor vehicle was then and there moving as interstate commerce from Wichita, Kansas to Dallas, Texas, and which motor vehicle the said defendant then and there knew to have been stolen. That is Count One.

A count in an indictment is a complete charge within itself.

Now, there is a second charge—and if I don't tell you elsewhere, an indictment in more than one count, the defendant may be convicted of both counts or may be acquitted of one count and convicted of the other count, or convicted of both counts or acquitted of both counts—so, I say, to illustrate the point, that each count is independent of the other.

Now, the second count is that heretofore, to-wit, about the 20th of September, 1956, in Dallas County, Texas, within the Northern District of Texas, and within the jurisdiction of this Court, the defendant, Mary Kathryn Smith, hereinafter called the defendant, did barter, sell and dispose of to Cecil R. Adkins, a certain stolen motor vehicle,

to-wit, a 1956 Dodge Royal Sedan automobile, motor number D63354173, which said stolen motor vehicle was then and there moving in interstate commerce from Wichita, Kansas to Dallas, Texas, and which said motor vehicle the said defendant knew to have been stolen.

To this indictment the defendant has entered her plea of not guilty to Counts One and Two.

The indictment is a charge that the government makes setting forth the things upon which a defendant is to be tried, and which it undertakes to prove to the satisfaction of the jury, by competent evidence, beyond a reasonable doubt.

All men are presumed to be innocent until their guilt is established by competent evidence beyond a reasonable doubt.

You, as members of the jury, and as a jury, acting and thinking as one, are the judges of the weight to be given to the testimony and of the credibility of the witnesses. The Judge must not pass upon those findings. In the division of our work you are the judges of the facts and the Judge has no business in the jury box and you have no business on the bench. You are the judges of the facts, that is, as to what is the truth.

An ancient writer once said, 'Seize upon the truth where'er it is found, whether on Christian or heathen ground. the flower divine, where'er it grows, neglect the prickle and assume the rose."

So, it is up to you to find the truth and determine the result of your findings.

The duty of the Judge is to tell you the law and to control and direct the course of the trial according to the law.

So, now. if you find and believe from the evidence, beyond a reasonable doubt, that on or about the 20th of September, 1956, at the time stated in the indictment which was read to you, that the defendant did then and

there sell the automobiles, knowing them to have been stolen, as charged in the indictment, then you will find the defendant guilty. If you have a reasonable doubt of her guilt then you will acquit her.

One of the elements of guilt, and an essential element of guilt, is that she had knowledge that they were stolen cars.

Summing up the evidence a little, three people assembled, maybe in a cafe, maybe at another place, in the State of Kansas, near the City of Wichita, and planned a visit to Texas. Just what they discussed, of course, is a matter of inference, but it was of sufficient importance that they were planning a trip to Texas.

A little later the defendant, the woman, was driving her car, in another car ahead of her, her husband, and in another car was her husband's co-defendant in the transaction in this case.

It is in evidence here, brought here by the defendant's counsel, which was not improper, an indictment against Paul Brinkley and the judgment of this Court against Paul Brinkley, by which judgment Paul Brinkley was adjudged guilty and sentenced to prison.

And second, one of that group, the husband of the defendant, Vernon Harold Smith, drove another car, three cars coming from Wichita to Dallas. He drove another car. They met at intervals along the way on the way to Texas.

When they got to Texas the defendant, according to the testimony—and there may be some conflict in it, and you are the judges of that—the defendant called a Dallas party, who testified here, Mr. Adkins. Some of the testimony is that she told Adkins that there were two stolen cars here for sale. This she denies. It is agreed she told Adkins there were two cars here; I believe there is no conflict about that.

Adkins came down and after leaving $1,000.00—and there may have been some conflict about what took place —but he left $1,000.00 and they kept $1,000.00, or somebody kept it, left it in her possession no evidence that it was returned, and the two cars were taken over by Adkins.

Now, in the light of this situation we will have to further charge you on the subject of principals.

Under the law, as made and provided, it is directed that whoever directly commits any act constituting an offense defined in any law of the United States, or who aids or abets, counsels and commands, induces or procures the commission of such offense is a principal.

So, the question now is, under the law, was the defendant aiding and abetting the other two parties to this crime which started on the trip to Dallas? If she was aiding and abetting knowingly and consciously, then she should be convicted at your hands. If she was innocently aiding and abetting and didn't know that the cars were stolen and was not apprised of it, then she should be acquitted.

Again, you are the judges. You have listened to the testimony of the different witnesses and you will have to weigh that testimony, and on the subject of testimony, I shall tell you that the defendant had a right to testify and had a right to be believed. On the other hand, the case is before you from the government, and is like this, where a witness has a direct and personal interest in the result of the case the temptation is strong to color, pervert or withhold the facts. The deep personal interest which she may feel or have in the result of the case should be considered by the jury in weighing the evidence and in determining how far, or to what extent, if at all, or the weight the same should receive. She has a right to offer testimony and the right to have it believed, and you may

believe it in preference to other witnesses, or you may disbelieve it.

The form of your verdict will be in writing and will be signed by one of your number as foreman.

Do not concern yourself, in the event you should find the defendant guilty, about the assessment of the penalty. In the State Court that is the responsibility of the jury, but in the Federal Court the Judge has that duty. The sole object of your labor is to say guilty or not guilty.

Now, there has been some suggestion, and some thoughts may go through your mind that maybe there are some other folks ought to be prosecuted. That cannot be explained or gone into. Maybe there is nobody that should be prosecuted, but if you think such things then you have to rely upon the prosecuting arm of the government to present them in due time, or to leave them not presented. Enough to say that it has that responsibility and that responsibility is its responsibility and it is not called upon to produce the reasons for doing or not doing it in another trial, other than the present.

There has been something said about the failure of a certain man, I believe Brinkley, in not testifying. Maybe he was here in the building, has been convicted, and it was not to his interest, so far as anybody knows, that he should testify, and if it was he could not testify unless one of the parties desired. Each party would seemingly have you believe that the other fellow had him here. I don't know whether you want to attach any importance to that or not. If you do, dismiss it from your mind, the Court brought him here for some other reason, or for a reason other than what may have been left in your mind.

Now, in addition to the law I have given you I am going to give you three charges that have been requested by the defendant and by her counsel:

You are charged as part of the law in this case that if you should believe beyond a reasonable doubt that the

1956 Buick, as alleged in Count One of the indictment, and that the 1956 Dodge, as alleged in Count Two of the indictment, were stolen automobiles and were moving as a part of interstate commerce from Whichita, Kansas to Dallas, Texas, and you should further believe from the evidence, beyond a reasonable doubt, that the said Mary Kathryn Smith, defendant, did sell the two automobiles, as alleged in the indictment, Counts One and Two, to one Cecil Robert Adkins, that you should further believe from the evidence or have a reasonable doubt therefrom that the said Mary Kathryn Smith, defendant, on or about September 20, 1956, at the time of the sales as alleged in Counts One and Two of the indictment, did not know that the automobiles were stolen, you will acquit the defendant and find her not guilty.

You are further instructed as a part of the law in the case that the defendant in the case is a witness just like any other witness in the case and you have no right to disregard and not consider the defendant's testimony merely because of the interest that the defendant may have to testify favorably to her cause, her testimony is to be weighed and considered with just as much care as the testimony of any other witness in the case. It may not weigh as much as you are entitled to weigh it, or it may weigh more.

You are charged that the witness, Cecil Robert Adkins is an accomplice witness. The evidence of such a witness whose self-interest or attitude or situation is shown to be such as might tend to prompt testimony unfavorable to the accused, should be considered with caution and weighed with great care.

You will select your own foreman and retire and consider of your verdict. If I find we have to give you any further charge we will send for you, but you may retire at this time.

(Jury retires from the Courtroom at 2:00 P.M.)

The Court:
Does the government have any exceptions?

Mr. Hamilton:
None, Your Honor.

The Court:
All right. The defendant?

Mr. Tessmer:
If Your Honor please, I would respectfully like to except to the Court's failure to give Instruction Number Two, which provides in substance that the mere possession of stolen property does not establish knowledge that the property was in fact stolen.

I would ike to except to the Court's failure to give that, and Requested Instruction Number Three.

The Court:
You don't have to take those up separately; just except to the Court's failure to give any requested instruction.

Mr. Tessmer:
All right, Your Honor.

The Court:
And you will have benefit of that.

Mr. Tessmer:
I except to the Court's failure to give the requested instructions that he did not give.

Also, to the Court's charge on the law of principal, which permits the jury on this evidence to convict the defendant should they find and believe that she aided, knowingly, and abetted the sale of these automobiles,

where somebody else stole them. And we take exception on the ground that the defendant only can be convicted as an aider and abettor under Title 18, Section 23 of the United States Code, that there must be complete proof of the actual commission of the entire offense by the one that this defendant is aiding and abetting, that is to say, Brinkley or Smith, and all the evidence must be proven that Smith and Brinkley committed this offense—

The Court:

I get your point. I think it is one worthy of consideration but I will let the charge stand as it is.

Mr. Tessmer:

I have one other exception.

I feel that the Court should have told the jury that in the case of an oral statement, that it is evidence just like all the other evidence in the case, and that the government, or the jury, or defense, is not bound by such an oral statement, unless they first find that it was voluntary and not made under agitation, mistake, and that sort of thing, with reference to what she told the agents at the county jail.

The Court:

Yes, the Court reporter will note your exception in that particular.

VERDICT.

Filed January 22, 1957.

Verdict of the Jury in the Case of United States of America vs. Mary Kathryn Smith, No. 15,138 Criminal.

We, The Jury, find the defendant Guilty on Count I. Guilty on Count II.

M. D. STANLEY,
Foreman.

JUDGMENT AND COMMITMENT.

Filed January 22, 1957.

United States District Court for the Northern District of Texas, Dallas Division.

United States of America,

v. No. 15,138 Criminal.

Mary Kathryn Smith.

On this 22nd day of January, 1957 came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon her plea of not guilty, and verdict of guilty on Count I and guilty on Count II, of the offenses of bartering, selling and disposing of two certain stolen motor vehicles, to wit, a 1956 Buick 4-door sedan, Serial number 6C4009697,

and a 1956 Dodge Royal sedan, motor number D63354173, which said stolen motor vehicles were then and there moving as interstate commerce from Wichita, Kansas, to Dallas, Texas, and defendant then and there well knew the same to have been stolen, in violation of Title 18, U.S.C., Section 2313, as charged in Counts I and II, and the Court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that imposition of sentence be, and is hereby, withheld for investigation by the Probation Officer; and,

Thereafter, on the 23rd day of January, 1957, after hearing report of the Probation Officer, It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years, generally.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

T. WHITFIELD DAVIDSON,
United States District Judge.

The Court recommends commitment to: Federal Reformatory for Women, Alderson, West Virginia.

A True Copy. Certified this 23rd day of January, 1957.
(Signed) JOHN A. LOWTHER,
Clerk.
By .....
Deputy Clerk.

Return.

I have executed the within Judgment and Commitment as follows:

Defendant delivered on.....to.....

Defendant noted appeal on.....

Defendant released on.....

Defendant elected, on.....not to commence service of the sentence.

Defendant's appeal determined on.....

Defendant delivered on.....to.....at

....., the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

....., ...,
United States Marshal.

NOTICE OF APPEAL FILED BY MARY KATHRYN SMITH.

Filed January 23, 1957.

Mary Kathryn Smith, 505 Main Street, Dallas, Texas.

Charles W. Tessmer, 202 Fidelity Building, 1000 Main St., Dallas, Texas.

Violation Title 18, Section 2313, U.S.C.A.

On the 23rd day of January, 1957, Appellant was sentenced to serve two years in the Federal Penitentiary by the Honorable T. Whitfield Davidson, Judge of the United States District Court for the Northern District of Texas, This sentence was passed on a finding of guilty by a trial jury in the above numbered cause.

Appellant is now confined under custody of the United State Marshal at 505 Main Street, Dallas, Texas, in the Dallas County Jail.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the above stated judgment.

Dated: January 23, 1957.

CHARLES W. TESSMER,
Attorney for Defendant.

202 Fidelity Bldg.,
1000 Main St.,
Dallas, Texas.

Copy.

APPEAL BOND OF MARY KATHRYN SMITH.

Filed January 24, 1957.

(Title Omitted.)

Be it remembered, that on this the 24th day of January, 1957, before me, William M. Hill, United States Commissioner for the Northern District of Texas, personally appeared Mary Kathryn Smith, Principal, and Wm. Soltes, Elton D. Soltes, Sureties and severally acknowleged themselves to owe to the United States of America the sum of One Thousand and No/100 Dollars ($1,000.00) Dollars, severally and individually to be levied of their and made of their respective goods and chattels, lands and tenements, to the United States of America if the conditions following be not met and be defaulted:

Whereas, on the 23rd day of January, 1957, in the District Court for the Northern District of Texas, in a cause pending in said Court between the United States of America and Mary Kathryn Smith, Defendant, a judgment and sentence was rendered against the said Mary Kathryn Smith, and the said Mary Kathryn Smith filed Notice of Appeal to the Circuit Court of Appeals for the 5th Circuit to reverse the sentence and judgment imposed against her, and whereas, bail was set by the Honorable Judge Davidson, United States District Judge at $1,000.00 (One Thousand Dollars) pending the disposition of the said appeal.

Now, the condition of the recognizance are such, that if the said Mary Kathryn Smith shall appear either in person or by her attorney, in the United States Circuit Court of Appeals for the 5th Circuit when the cause is set for argument and shall from day to day thereafter abide and

obey all orders made in said cause and shall surrender herself in execution of the judgment and sentence appealed from upon such day as the district Court of the United States for the appealed from shall be affirmed, and if the judgment be reversed the said Mary Kathryn Smith shall appear before the District Court of the United States for the Northern District of Texas on such day or days as shall be set for retrial of said cause and the said Mary Kathryn Smith shall not depart the jurisdiction of the aforesaid Court without leave, then this recognizance to be void, otherwise to remain in full force, virtue and effect.

We, the undersigned principal and surety, do hereby stipulate, agree, and consent, that in case the aforesaid recognizance shall be forfeited judgment may be entered for the sum set forth in said recognizance, and that execution issue thereon according to law.

Acknowledged before me the day and year first above written.

(Seal) (S.) MARY KATHRYN SMITH,
PRINCIPAL,

3109 McNiel St.,
Dallas, Texas.

Approved as to form only:

(S.) WILLIAM M. HAMILTON,
Assistant U. S. Attorney.

(S.) WM. SOLTES,

610 Main St.,
Dallas, Texas.

ELTON D. SOLTES,

610 Main St.
Dallas, Texas.

SURETIES.

Approved:

(S.) WILLIAM M. HILL,
United States Commissioner,
Northern District of Texas.

STATEMENT OF POINTS ON APPEAL.

Filed Feb. 19, 1957.

(Title Omitted.)

1. The error of the Court in overruling the Motion for Judgment of Acquittal.

2. The error of the Court in overruling the Motion to Dismiss the Indictment.

3. The error of the Court in admitting prejudicial testimony of the Appellant concerning her having been in the liquor business and having been convicted of a liquor violation in the State of Kansas, even though said evidence was withdrawn.

4. The error of the Court in refusing requested instructions numbers 2, 3, 5, 6 and 7.

5. The error of the Court in permitting the jury to convict the Appellant as an aider and abetter where she was charged as a principal.

6. The error of the Court with reference to the admission in evidence of an unsound confession without first determining that the document was admissible as a fact

issue by the Court and in permitting the use of the instrument in the same manner as a signed confession.

7. The failure of the Court to instruct the jury on the law with reference to whether or not the written statement made by the Federal Bureau of Investigation was faulty.

CHARLES W. TESSMER,
(Charles W. Tessmer),
Attorney for Defendant.

202 Fidelity Bldg.,
1000 Main St.,
Dallas, Texas—RI-8-3433.

A copy of the above Statement of Points on Appeal was served on the United States Attorney for the Northern District of Texas, this the 18th day of February, A.D. 1957.

DESIGNATION FOR THE RECORD ON APPEAL.

Filed Feb. 19, 1957.

(Title Omitted.)

The defendant by his attorney here and now designates for the record on appeal the following:

The indictment; Motion to Dismiss Indictment and Order Overruling; Requested Instructions Numbers 2, 3, 5, 6 and 7; Motion for Judgment of Acquittal; Order Overruling Motion for Judgment of Acquittal, Sentence, Judgment, Commitment; Transcript of Evidence in question

and answer form; Charge of the Court; Exceptions to the Court's Main Charge as shown by the Transcript of Evidence; Notice of Appeal; Appeal Bond; Statement of Points on Appeal; Motion for Extension of Time and Order thereon to docket appeal. Clerk's Certificate.

CHARLES W. TESSMER,
(Charles W. Tessmer),
Attorney for Defendant.

202 Fidelity Bldg.,
1000 Main St.,
Dallas, Texas.

A copy of the above designation for the record, was this 18 day of February, 1957, served on the Assistant United States Attorney, for the Northern District of Texas, at Dallas, Texas.

APPELLEE'S CROSS-DESIGNATION FOR RECORD ON APPEAL.

Filed Apr. 15, 1957.

(Title Omitted.)

Now comes the United States of America, plaintiff in the above numbered and entitled cause, by its United States Attorney for the Northern District of Texas, and designates for the record on appeal, in addition to the record as designated by the defendant, the following:

1. Bill of particulars filed by the Government.

2. Verdict of the jury.

HEARD L. FLOORE,
(Heard L. Floore),
United States Attorney.
By WILLIAM N. HAMILTON,
(William N. Hamilton),
Assistant United States
Attorney.

P. O. Box 153,
Dallas, Texas.

A copy of the above cross-designation for the record on appeal was this 15th day of April, 1957, served on Charles W. Tessmer, 202 Fidelity Building, 1000 Main Street, Dallas, Texas, by depositing same in the United States Mail.

WILLIAM N. HAMILTON,
(William N. Hamilton),
Assistant United States
Attorney.

MOTION FOR EXTENSION OF TIME AND ORDER THEREON.

Filed Feb. 19, 1957.

(Title Omitted.)

Whereas, on the 23rd day of January, 1957, a judgment of Conviction was entered against the above appellant

and whereas Notice of Appeal was filed on the 23rd day of January, 1957, and,

Whereas, the press of business on the Court Reporters for the above Court is such that he would not be able, without undue hardship, to complete the transcript of the testimony within sufficient time to file same in the Circuit Court of Appeals for the 5th Circuit within the time allowed by law, appellant respectfully requests the Court to order an extension of time to file the transcript of the testimony and the record in the Circuit Court of Appeals for the 5th Circuit at New Orleans, La., until the 17th day of April, 1957.

CHARLES W. TESSMER,
(Charles W. Tessmer),
Attorney for Appellant.

202 Fidelity Bldg.,
1000 Main St.,
Dallas, Texas.

ORDER.

Upon reading the above Motion it is hereby ordered that the time for the above defendant-appellant to file the transcript of the record herein in the Circuit Court of Appeals for the 5th Circuit be and the same is hereby extended to the 17th day of April, 1957.

(S.) T. WHITFIELD DAVIDSON,
Judge of the United States District Court for the Northern District of Texas, Dallas Division.

A copy of the above Motion for Extension of Time and Order Thereon, was this 18 day of February, 1957, served on the Assistant United States Attorney, for the Northern District of Texas, at Dallas, Texas.

CLERK'S CERTIFICATE.

I, JOHN A. LOWTHER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record and all proceedings in cause Number 15,138 Criminal, wherein, United States of America is plaintiff and Mary Kathryn Smith is defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 15th day of April 1957.

JOHN A. LOWTHER,
Clerk, U.S. District Court, Northern District of Texas.

(Seal)

By ELIZABETH McCLELLAN,
Deputy.

Office - Supreme Court, U.S.
FILED
MAR 31 1958
JOHN T. FEY, Clerk

No. 883

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16,475

MARY KATHRYN SMITH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR REHEARING

U. S. COURT OF APPEALS
FILED
FEB 14 1958
EDWARD W. WADSWORTH
CLERK

CHARLES W. TESSMER,
1002 Fidelity Bldg.,
1000 Main Street,
Dallas, Texas,
Attorney for Petitioner.

WARLICK LAW, INC.—1307 HORD STREET—DALLAS—RI 1-6711

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16,475

MARY KATHRYN SMITH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR REHEARING

To the Said Honorable Court:

Now comes Mary Kathryn Smith, hereinafter called Petitioner, and petitioning for re-hearing herein, respectfully moves the Court for a reversal of its holding and opinion handed down in this cause on January 30, 1958 and to remand the same to the United States District Court for the Northern District of Texas, at Dallas, for the following reasons:

I

Petitioner earnestly urges that this Court was in error in holding that the Trial Court was not in error in charg-

ing the jury that Appellant could be convicted as an aider and abettor because the evidence was not sufficient to permit the conviction of Appellant as an aider and abettor.

1. Petitioner earnestly urges that the holding of the Court in affirming this cause (under I.) is in conflict with Morgan v. U. S., 159 Fed. 2nd, 85-87 (10 C. C. A.).

Horton v. U. S., 180 Fed. 2d 427 (7 C. C. A.).

II

Petitioner earnestly urges that this Court was in error in holding that the Trial Court was not in error in failing to declare a mistrial after evidence of extraneous offense against Appellant was presented in the presence and hearing of the jury.

1. Petitioner earnestly urges that the holding of this Court in affirming this cause is in conflict with this Court's opinion that was rendered in the case of Helton v. U. S., 221 Fed. 2d 338 (1955). Also, Guilbeau v. U. S., 288 Fed. 731 (1923).

2. Petitioner earnestly urges that the holding of this Court in affirming this cause is in conflict with the Supreme Court of the United States in Boyd v. U. S., 142 U. S. 450.

3. Petitioner earnestly urges that the holding of this Court in affirming this cause is in conflict with U. S. v. Provoo, 215 Fed. 2d 531-535 (2 C. C. A.).

III

Petitioner earnestly urges that this Court was in error in holding that the Trial Court was not in error in failing

to charge the jury on the nature of a voluntary confession as to its admissibility and *credibility*.

1. Petitioner earnestly urges that the holding of this Court in affirming this cause is in conflict in principle with this Court's opinions in the cases of Duncan v. U. S., 197 Fed. 2d 935-938 (Cert. den., 344 U. S. 885) and Brown v. U. S., 228 Fed. 2d 286-289 (Cert. den., 351 U. S. 986).

2. Petitioner earnestly urges that the holding of this Court in affirming this cause is in conflict in principle with the decision of the Supreme Court of the United States in Wilson v. U. S., 162 U. S. 613-624.

STATEMENT AND NATURE OF THE CASE

It is not deemed necessary to do this here, and Petitioner, therefore, adopts the statements made in his original brief, pages 1 and 2.

BRIEF OF THE ARGUMENT

Since the Rules of this Court preclude petitioner from setting forth herein any argument in support of this petition, we most respectfully refer the Honorable Court to the Statements and Arguments as set forth and contained in petitioner's original brief.

Petitioner's counsel would be highly pleased to appear before this Honorable Court and present oral argument in support of this petition should the court desire to hear argument. Since this petitioner is firmly and sincerely convinced of the belief that this Court's holding in affirming petitioner's judgment of conviction and sentence is in conflict with the authorities cited in petitioner's original brief

filed herein, and that same is also in conflict with the authorities hereinabove set forth, he most respectfuily urges upon this Court that a written opinion be rendered in this said cause in order that the said petitioner may be apprized of this Court's reasoning in distinguishing her case from the said authorities cited.

CONCLUSION

Petitioner prays that this Honorable Court set aside its action in affirming this cause and that this said cause be reversed and remanded for a new trial.

CHARLES W. TESSMER,
1002 Fidelity Bldg.,
1000 Main Street,
Dallas, Texas,
Attorney for Petitioner.

I, Charles W. Tessmer, Attorney for Petitioner, certify that I believe there is presented a meritorious cause here, and, further that I have served Counsel for the Appellee with two copies of this petition by having mailed same to said counsel at his address in Dallas, Texas, postage prepaid, U. S. Mail.

.....

CHARLES W. TESSMER,

MOTION

Now comes Appellant (Petitioner) in the above entitled and numbered cause and would respectfully request in the alternative that should this petition for rehearing be overruled by this Honorable Court, that the said Honorable Court withhold the mandate in this cause and permit Appellant to remain at liberty on her original bail, pending a review of the judgment of this Court by the Supreme Court of the United States on petition for Writ of Certiorari.

Appellant would further show this Honorable Court that she will, within the time allowed by law, have the record of this cause prepared by the Clerk of this Honorable Court, and will petition the Supreme Court of the United States for Writ of Certiorari, to review this judgment. Appellant further states that she will make this petition for Writ of Certiorari in good faith, based upon her honest belief that the judgment of this Court should be reviewed.

WHEREFORE, PREMISES CONSIDERED, Appellant prays that the Honorable Court enter an order granting this motion in all things and that an appropriate order staying the mandate of the Honorable Court and permitting the Appellant to remain at liberty on bail be entered.

Respectfully submitted,

CHARLES W. TESSMER,
1002 Fidelity Bldg.,
Dallas, Texas,
Attorney for Petitioner.

FILED
MAR 31 1958
JOHN T. FEY, Clerk

No. 883

In the

Supreme Court of the United States

TERM, 1958

MARY KATHRYN SMITH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

CHARLES W. TESSMER,
1002 Fidelity Building,
Dallas, Texas,
Counsel for Petitioner.

WARLICK LAW, INC.—1207 HORD STREET—DALLAS—RI 1-6711

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No. .....

In the

Supreme Court of the United States

TERM, 1958

MARY KATHRYN SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on January 30, 1958.

Petition for Rehearing was timely filed and overruled on February 25, 1958, thereafter Motion to Stay the Mandate was granted by the Court.

CITATIONS TO OPINION BELOW

The case is reported in F. 2d (Printed in Appendix A).

JURISDICTION

The jurisdiction of this court is invoked under Title 28, Section 1254 (sub-sec. 1), 62 Stat. 928.

QUESTIONS PRESENTED

1. Where the record reflects:

   (a) That petitioner was indicted as a principal under Title 18, U. S. C., Sec. 2313 (sale of stolen automobiles that had been transported in interstate commerce).

   (b) The trial court permitted conviction of petitioner as an aider and abettor under Title 18, U. S. C., Sec. 2.

Q. Must the proof establish that another person committed the offense (all elements) who was aided and abetted by petitioner? Classification, *Horton v. U. S., C. C. A. 7, Ill. 1950, 180 Fed. 2d 427*, or must the proof only establish that someone else might have committed the substantive offense as principal who was aided and abetted by the petitioner? Classification, *Von Patzoll v. U. S., 10 C. C. A. 1947, 163 Fed. 2d 216-219.*

2. Is it necessary for the trial court to charge on the credibility of a confession where it is a disputed question of fact?

STATUTES INVOLVED

Title 18, U. S. C., Sec. 2313; Title 18, U. S. C., Sec. 2.

STATEMENT OF THE CASE

Appellant was charged by indictment with a violation of the Dyer Act, Title 18, U. S. C., Section 2313. Count I of the indictment charged the sale of a 1956 Buick 4-door sedan, which was moving as a part of interstate commerce and that Appellant knew that it had been stolen. Count II charged the same offense with reference to a 1956 Dodge. The case was tried to a jury on the 21st day of January, 1957, and on January 22nd, 1957, the jury returned a verdict of guilty as to both counts of the indictment. On January 23rd, 1957, the Court imposed a sentence of two years generally. Appellant gave written notice of appeal on January 23rd, 1957, and she is here seeking a grant of the writ of certiorari to review the judgment of the Court of Appeals rendered on the 30th day of January, 1958.

FACTS

The evidence developed that petitioner came to the State of Texas in her own automobile and that petitioner's husband, Harold Smith, and his companion, Paul Brinkley, drove two late '56 model automobiles from Kansas to Dallas, Texas. The evidence further developed that petitioner contacted one Cecil R. Adkins concerning the purchase of the two late '56 model automobiles. The facts further showed according to Cecil R. Adkins that appellant somehow produced the two automobiles and obtained a downpayment from him thereon and that that was the

only connection that petitioner had with the said automobiles.

The evidence for the petitioner developed that she had no knowledge that the two automobiles were stolen and that her only connection with the alleged automobiles was to pick up a downpayment at the request of Harold Smith and Paul Brinkley, from Cecil R. Adkins. The only other evidence implicating petitioner with the offense was a written statement which she refused to sign because appellant testified that the F. B. I. had included in the statement matters that were not true, that is, concerning her guilty knowledge that the cars were stolen.

The only connection of Harold Smith and Paul Brinkley with the charge was petitioner's testimony that they drove the two '56 automobiles down from Kansas and that petitioner contact Cecil R. Adkins concerning the sale and that she pick up the downpayment on the automobiles. The evidence further showed that Harold Smith and Paul Brinkley were convicted of transporting in interstate commerce stolen automobiles from the State of Kansas to Texas. The evidence did not show a sale on the part of Brinkley or Smith to Adkins.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals in the Per Curiam Opinion is in conflict with the statutory construction given Title 18, Sec. 2, U. S. C. A., in the Court of

Appeals for the Seventh Circuit and in the Court of Appeals for the Tenth Circuit. See the following authorities:

Horton v. U. S., C. C. A. 7, Ill. 1950, 180 F. 2d 427 (4, 5)—The defendant may be tried and convicted as a principal upon proof, that he aided and abetted the commission of a crime, but one cannot aid and abet in the commission of a crime unless there is another who has committed the offense;

Morgan v. U. S., C. C. A. 10, Okla., 159 F. 2d 85-87 (1947) — under a charge of aiding and abetting one cannot be convicted without satisfactory evidence, not only of participation as an aider and abettor but the proof must show that another committed the offense which was aided and abetted;

Von Patzoll v. U. S., 10th Circuit, 1947, 163 F. 2d 216-219—this decision changes the rule in the Tenth Circuit and holds in effect that the proof need not show that someone else did commit the offense as to all its constituent elements, but only that someone else may have committed the offense.

Smith v. U. S., 5th Circuit, 1958, F. 2d , per curiam.

In petitioner's case, there is no proof that someone else may have committed the offense as an aider and abettor, much less that someone else did commit the offense as to all its constituent elements as required in *Horton* above.

Thus, it is apparent that there is a direct conflict as to the legal construction to be given Title 18, U. S. C. A., Sec. 2. The conflict is not one of fact. It is true that petitioner was not apprised of the reasoning of the Court of Appeals by the Per Curiam Opinion, however, the proper statutory construction to be given Title, 18, U. S. C. A.,

Sec. 2, is one of great importance. The conflict between the Seventh, Tenth and Fifth Court of Appeals should be decided by this Honorable Court.

2. The decision of the Court of Appeals in holding that a charge on the credibility of petitioner's confession was not required where there was an issue as to the credibility, is in conflict in principle with this Honorable Court's decision in *Wilson v. U. S., 162 U. S. 613, 624.*

The decision of the Court of Appeals is in conflict with the following decisions in the Court of Appeals for the District of Columbia:

Catoe v. U. S., 131 F. 2d 15, 19 D. C.;

Tyler v. U. S., 193 F. 2d 24, 28, D. C. Cert. Den. 343 U. S. 908.

Under the authority and procedure as outlined in the *Wilson* case above, these decisions in the Court of Appeals for the District of Columbia hold that not only is the accused entitled to a submission of the question of voluntariness of a confession where same is in dispute to the jury, but that the accused is also entitled to a submission of the credibility of the statement or confession where the credibility thereof is a disputed factual issue. (Petitioner refused to sign the statement because the F. B. I. wrote in the statement that she knew the cars were stolen.)

A proper exception was reserved to the trial court's failure to charge on the credibility of petitioner's confession. The affirmance of this cause by the Court of Appeals

places the decision of the Court of Appeals in conflict with the decision of the Supreme Court in the *Wilson* case above and in conflict with the Court of Appeals for the District of Columbia Circuit.

IMPORTANCE

The questions presented in this petition for writ of certiorari are of sufficient importance to authorize this Honorable Court to grant the writ for the following reasons:

1. The proper construction to be given Title 18, U. S. C. A., Sec. 2, is of primary concern to every Federal District Court in the United States.

2. The proper construction to be given the law of principals and the law of aiders and abettors is not only a question of substantive law but also one of procedure.

3. A uniform application of the statute should be available in every Court of Appeals.

As to the question of the proper charge to be given concerning a confession and its credibility, there can be no doubt that Federal jurisdictional and procedural issues are involved which would warrant the grant of the Writ of Certiorari. Classification, *Bruner v. U. S., 343 U. S. 112; McNabb v. U. S., 318 U. S. 332, 341; Sacher v. U. S., 343 U. S. 1.*

This Honorable Court has granted petitions for Writs of Certiorari in cases involving the proper construction of federal rules of Civil and Criminal procedure. Classifica-

tion, *Hickman v. Taylor, 329 U. S. 495; Upshaw v. U. S., 335 U. S. 410.*

There can be no doubt that an important issue concerning the proper application of the law of principals is here presented.

The Supreme Court in the exercise of its supervisory authority over the administration of criminal justice in the Federal Courts is not restricted to the requirements of the Constitution with reference to rules of evidence and to procedure. Classification, *Nardone v. U. S., 308 U. S. 338.*

Petitioner respectfully submits that not only is there a conflict in the Courts of Appeal on the matters presented in this petition, but that the decision of the Court of Appeals was erroneous below to such an extent that Certiorari jurisdiction should be exercised by this Honorable Court, even if the conflict were factual and not legal. See:

Chambers v. Florida, 309 U. S. 227;

Malinski v. New York, 324 U. S. 401;

Hawk v. Olson, 326 U. S. 271;

DeMeerleer v. Michigan, 329 U. S. 663.

The above decisions would indicate that the compelling reason for the grant of Certiorari in those cases was the erroneousness of the decision below in cases involving coerced confessions and the appointment of counsel in criminal cases.

CONCLUSION

For the foregoing reasons this Petition for Writ of Certiorari should be granted.

.....

CHARLES W. TESSMER,
1002 Fidelity Building,
Dallas, Texas,
Counsel for Petitioner.

CERTIFICATE OF SERVICE

I hereby certify that on the.....day of....., 1958, I mailed two copies of this Petition, postage prepaid, to the Solicitor General of the United States, at his office in Washington, D. C., and a copy, postage prepaid, to the United States Attorney at Dallas, Texas, by leaving a copy at his office.

.....

CHARLES W. TESSMER

APPENDIX A

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16475

MARY KATHRYN SMITH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Texas.

(January 30, 1958.)

Before TUTTLE, JONES and BROWN, Circuit Judges.

PER CURIAM: The appellant appeals from a conviction under the Dyer Act, 18 U. S. C. A. Sec. 1213, of selling in Dallas, Texas, two automobiles which had been stolen in Wichita, Kansas, and which she knew had been stolen. The questions raised are not, in our opinion, substantial, and the errors, if any there were, at the trial, were harm-

less. The evidence was more than sufficient to sustain the verdict of guilt. The judgment appealed from is

AFFIRMED.

A true copy
Test: /s/ Edward W. Wadsworth
EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

APPENDIX B

JUDGMENT

Extract from the Minutes of January 30, 1958.

No. 16475

MARY KATHRYN SMITH

v.

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

—00000—

APPENDIX C

Title 18 U. S. C., Sec. 2, provides:

"2. Principals

"(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

"(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is also a principal and punishable as such."

Title 18 U. S. C., Sec. 2313, provides:

"2313. Sale or receipt of stolen vehicles

"Whoever receives, conceals, stores, barters, sells, or disposes of any motor vehicle or aircraft, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 806."

APPENDIX D

ORDER STAYING MANDATE FILED:—

March 5, 1958.

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16,475

MARY KATHRYN SMITH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

ON CONSIDERATION OF THE APPLICATION of the appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days from February 25, 1958; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from February 25, 1958 there shall be filed with the clerk of this court the certifi-

cate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from February 25, 1958, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

DONE AT NEW ORLEANS, LA., this 5th day of March, 1958.

/s/ ELBERT P. TUTTLE

United States Circuit Judge.

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Wilson v. *United States*, 162 U. S. 613 8

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18 U. S. C. 2 2

18 U. S. C. 2313 2

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 883

MARY KATHRYN SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 154–155; Pet. App. 11–12) is reported at 251 F. 2d 819.

JURISDICTION

The judgment of the Court of Appeals was entered on January 30, 1958 (R. 156; Pet. App. 13). A petition for rehearing was denied on February 25, 1958 (R. 157–160, 162). By an order dated March 27, 1958, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including April 11, 1958. The petition was filed on March 31, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether it was proper to instruct that petitioner could be convicted as an aider and abettor.

2. Whether the trial court erred in failing to instruct specifically as to the credibility of an unsigned confession.

STATUTES INVOLVED

18 U. S. C. 2313 provides:

> *Sale or receipt of stolen vehicles.*
>
> Whoever receives, conceals, stores, barters, sells, or disposes of any motor vehicle or aircraft, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U. S. C. 2 provides:

> *Principals.*
>
> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

STATEMENT

Petitioner was charged in a two-count indictment returned in the United States District Court for the Northern District of Texas with sales of a 1956 Buick and a 1956 Dodge moving in interstate commerce, the petitioner knowing that these automobiles had been

stolen, in violation of 18 U. S. C. 2313 (*supra*, p. 2) (R. 1–2). The jury found petitioner guilty on both counts, and she was sentenced to imprisonment for two years (R. 141–142). On appeal (R. 144), the judgment was affirmed *per curiam* (R. 156; Pet. App. 13).

1. The pertinent evidence adduced at the trial may be summarized as follows:

On or about September 19, 1956, the Buick and Dodge automobiles involved in the prosecution were stolen from an automobile company in Wichita, Kansas (R. 12–13). On September 20, petitioner had these two cars in her possession at the El Sombrero Motor Hotel in Dallas, Texas (R. 15). Cecil Adkins, the operator of a government-surplus business in Dallas, testified that, after receiving a phone call from petitioner, he went to the motor hotel (R. 15, 17–18). Petitioner stated that she wanted to sell the Buick for $1,750, but, since she did not have the title at the time, it was agreed that Adkins should pay $1,000 down and the remainder later. When Adkins returned with the $1,000 cash, petitioner said that he could also take the Dodge as part of the deal (R. 15, 16, 49). Petitioner represented that she owned both the Buick and the Dodge (R. 24). Petitioner removed the license plates from the Buick (R. 17, 25). Adkins kept the Buick for himself, and around December 1, 1956, he loaned the Dodge to Harold Roberts (R. 16, 17).

On December 19, 1956, the F. B. I. recovered the stolen Buick from Adkins, the Dodge having previously been recovered from Roberts (R. 25, 27, 72).

Adkins made two written statements regarding the transaction to the F. B. I. on December 19 and 20. These were introduced in evidence as Defendant's Exhibits 1 and 2 (R. 52–54).

On December 20, 1956, F. B. I. agents took a voluntary statement from petitioner after warning her of her legal rights (R. 56–57, 87–88). Her account, according to the agents, was that she came from Wichita in her car, in which she carried discarded out-of state license plates obtained by Brinkley and her husband; that, when she started from Wichita, Brinkley was driving the Buick and her husband the Dodge; that, upon arrival in Dallas on September 20, Brinkley told her that the two cars had been stolen and that he wanted to sell them; that Brinkley and her husband drove the two cars to the El Sombrero Motel; and that she accepted $1,000 from Adkins for the cars (R. 62–64, 90–91). The agents testified that petitioner informed them that her statement was true, but refused to sign it (R. 59–61, 64–65, 78, 91).

At the beginning of the case for the defense, Defendant's Exhibits 4 through 7 were introduced to show the convictions of Brinkley and petitioner's husband for illegal transportation of the two stolen cars in interstate commerce (R. 93–102).

Petitioner testified on her own behalf as follows: She thought that her husband and Brinkley were to receive $40 per car from a dealer for driving the cars from Wichita to Dallas (R. 104). Upon arrival in Dallas, Brinkley spoke on the phone to Adkins who wanted the two cars parked at the El Sombrero (R. 106–107). Brinkley asked petitioner to go to El

Sombrero to collect the money for the cars (R. 107). When Adkins brought only $1,000 instead of the $1,500 which petitioner was supposed to receive, she phoned Brinkley to settle the matter but Adkins became nervous and left. When Brinkley arrived, he picked up the $1,000 Adkins had delivered, and she received no part of it (R. 108–109, 125).

Petitioner also testified that she did not know that the cars had been stolen when she went to collect the money from Adkins (R. 112), but that she learned this fact when she was arrested several months later in December (R. 110). Petitioner stated that, although the F. B. I. agents were "very nice" to her, she refused to sign the statement they took from her, since it referred to the two cars as stolen, and she did not know they were stolen at the time of the sale to Adkins (R. 113–114, 116–117, 128).

2. In its charge to the jury, the court, after referring to a conflict in the evidence as to the circumstances under which Adkins left the $1,000 with petitioner, stated (R. 136):

> Now, in the light of this situation we will have to further charge you on the subject of principals.
>
> Under the law, as made and provided, it is directed that whoever directly commits any act constituting an offense defined in any law of the United States, or who aids or abets, counsels and commands, induces or procures the commission of such offense is a principal.
>
> So, the question now is, under the law, was the [petitioner] aiding and abetting the other two parties to this crime which started on the

> trip to Dallas? If she was aiding and abetting knowingly and consciously, then she should be convicted at your hands. If she was innocently aiding and abetting and didn't know that the cars were stolen and was not apprised of it, then she should be acquitted.

Petitioner's counsel excepted to this part of the charge on the ground that, in order for her to be convicted as an aider and abettor, "there must be complete proof of the actual commission of the entire offense by the one that this [petitioner] is aiding and abetting, that is to say, Brinkley or Smith, and all the evidence must be proven that Smith and Brinkley committed this offense—" (R. 139–140).

Petitioner's counsel also entered this exception to the charge (R. 140):

> I feel that the Court should have told the jury that in the case of an oral statement, that it is evidence just like all the other evidence in the case, and that the government, or the jury, or defense, is not bound by such an oral statement, unless they first find that it was voluntary and not made under agitation, mistake, and that sort of thing, with reference to what she told the agents at the county jail.

The court did not alter its charge in response to either of these exceptions.

ARGUMENT

1. Petitioner contends that she could not be convicted as an aider and abettor since there was no proof that another person committed the offense which she is supposed to have aided and abetted (Pet. 4–6).

Petitioner was charged as a principal and the government's evidence was sufficient to warrant her conviction as a principal (Statement, *supra*, pp. 3–4). In an early part of its charge, the court gave an instruction upon which petitioner's conviction as a principal could be predicated.[1]

It was petitioner who introduced evidence tending to show that Brinkley was the principal in consummating the sale, and that she merely went to the El Sombrero motel to collect the purchase money for him (R. 108–109, 125). Petitioner apparently hoped that the jury would think Brinkley was the real culprit and she an innocent dupe. In this setting it was proper for the court to give the challenged instruction on aiding and abetting.

There is no conflict with the cited cases (see Pet. 5) holding that one cannot be an aider and abettor unless there is evidence that another person has committed the crime. Here, there was defense evidence tending to show that Brinkley had committed the crime as a principal. It is immaterial whether in convicting petitioner the jury thought that she was a principal under the government's evidence, or that she was an aider and abettor under the evidence adduced by the defense. In either case her conviction was proper.

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[1] "So, now, if you find and believe from the evidence, beyond a reasonable doubt, that on or about the 20th of September, 1956, at the time stated in the indictment which was read to you, that the [petitioner] did then and there sell the automobiles, knowing them to have been stolen, as charged in the indictment, then you will find the [petitioner] guilty. If you have a reasonable doubt of her guilt then you will acquit her" (R. 134–135).

2. Petitioner contends that the trial court erred in failing to give an instruction relating specifically to the credibility of her unsigned confession (Pet. 6–7). In taking exception to the charge, however, her counsel did not request such an instruction, but urged that the jurors were "not bound by such an oral statement, unless they first find that it was voluntary and not made under agitation, mistake, and that sort of thing, with reference to what she told the agents at the county jail" (R. 140). Since there was no evidence that the confession was involuntary,[2] it was not necessary for the court to submit the question of its voluntariness to the jury. Cf. *Wilson* v. *United States*, 162 U. S. 613, 624. The cited cases of *Catoe* v. *United States*, 131 F. 2d 16, 19 (C. A. D. C.), and *Tyler* v. *United States*, 193 F. 2d 24, 28 (C. A. D. C.), certiorari denied, 343 U. S. 908 (Pet. 6), hold merely that conflicting evidence as to voluntariness must be submitted to the jury.

Petitioner had testified that the confession was incorrect in referring to the cars as stolen. The court charged that she had a "right to offer testimony and the right to have it believed, and you may believe it in preference to other witnesses, or you may disbelieve it" (R. 136–137). The court also charged that "the defendant in the case is a witness just like any

[2] Petitioner did not claim that the F. B. I. agents used coercion or duress, but on the contrary testified they were "very nice" to her (R. 116). Petitioner stated that she would not sign the statement, not because she was mistaken in what she told the agents, but because they were mistaken in including in the statement remarks that the cars had been stolen (R. 116, 128).

other witness in the case and you have no right to disregard and not consider [her] testimony merely because of the interest that [she] may have to testify favorably to her cause, her testimony is to be weighed and considered with just as much care as the testimony of any other witness in the case" (R. 138). The result is that the question as to the credibility of the confession, although not specifically mentioned, was submitted to the jury in a fair and impartial manner. If the jury had believed petitioner's testimony that she did not know the cars were stolen at the time of sale, instead of the contrary version in her unsigned confession, she would have been acquitted rather than convicted.

CONCLUSION

The case was decided in accordance with settled legal principles, and no conflict in decisions is involved. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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